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Current Topics.

Irregular Marriages in Scotland.

THE interesting discussion in Parliament recently on this subject will, it may be hoped, lead ere long to the introduction into Scotland of the machinery for enabling civil marriages to be contracted with that regularity and provision for registration to which we have long been accustomed in England. It is true that the irregular marriage, as it has prevailed in the North, proved eminently useful for the needs of the novelist, but against this equivocal merit has to be set the trouble that has often been entailed in the past in order to establish the validity of the alleged marriage and the consequent legitimacy of the union. The steps to which recourse has sometimes been had to overcome the evidential difficulty have been many and ingenious. At one time a collusive prosecution was initiated in which a nominal penalty was imposed and thereupon an extract of the sentence constituted a record of the marriage. This method, however, was abolished by the Marriage (Scotland) Act, 1916, s. 3. Now, a common practice is for the parties, within three months of the marriage, to present a petition to the Sheriff, the Scottish equivalent of our County Court judge, but with somewhat more extensive jurisdiction, asking for a warrant to enable the registrar to register the marriage in accordance with the provisions of the Marriage (Scotland) Act, 1856. The Sheriff, if satisfied by the evidence adduced before him that a marriage was in fact entered into, grants his warrant to the registrar enabling him to make the necessary entry in the register. This circuitous and somewhat troublesome machinery might well be relegated to the law's lumber room, and it is to be hoped that it will be as a result of the recent discussion in the House of Commons.

Marketing Boards: Report of Committee.

SEVERAL important recommendations are made, in the course of a report issued some ten days ago, by the Departmental Committee on the Imposition of Penalties by Marketing Boards and Other Similar Bodies which was appointed by the Treasury last July as a result of an undertaking given by the Minister of Agriculture and Fisheries during the passage of the Sea Fish Industries Act. The report is published by H.M. Stationery Office, price 1s. net. It is stated that criticism of the domestic nature of the penalty arrangements was made to the committee by Members of Parliament and other witnesses, but that this was not supported by producers' organisations who favoured the retention of the present system. The committee does not assent to the proposition that the present arrangements are wrong on principle because offenders appear before a domestic tribunal instead of in the ordinary courts, or because the marketing board seems to be prosecutor, jury and judge of its own cause. Similar criticism, it is urged, could be applied to a whole class of industrial and professional associations, and offences under marketing schemes should be dealt with by domestic tribunals and not in the courts. The committee recommends that under each scheme a disciplinary committee, consisting of not more than five persons, should be set up to deal with offences against the scheme. The chairmen of these committees should be independent persons with legal qualifications and experience, appointed by the appropriate Minister. The members of each committee would be members of the marketing board concerned, and, it is suggested, might include representatives of any special interests on the board when cases affecting such interests were being heard. The committee does not think it necessary that evidence before the disciplinary committee should be on oath, or that witnesses should be subpœnaed to attend. The report also contains recommendations designed to facilitate the holding of provincial meetings and to improve the position of the provincial producer when the disciplinary committee is obliged to meet in London. In particular it is recommended that costs should be payable at the discretion of the disciplinary committee to a producer against whom a charge has been made.

Amount of Penalty.

ON the whole the committee is of opinion that the amounts of the penalties imposed by the boards have not been unreasonably high. The apparently high penalties imposed by the English Milk Marketing Board are attributed to the particular nature of the scheme and to the fact that when the commission of an offence has involved a loss to the funds of the board it has been the practice of the board to recover such loss as part of the penalty imposed. The committee regards it as unsatisfactory that such a method should have been adopted, and recommends that when offences of this kind have been committed the penalty imposed by the disciplinary committee should be simply a fine for the offence, and that any losses to the fund should be recovered under

a separate order of the committee. It is advocated that the existing right of appeal to an arbitrator should continue, but that there should also be a right of appeal from the disciplinary committee to the High Court on questions of law. The nature of the penalties imposed and the procedure adopted with reference to coal mines schemes are quite different from those under agricultural marketing schemes, and the committee has received unanimous evidence to the effect that these schemes are working smoothly and are giving general satisfaction. No alterations of the present arrangements are therefore recommended. The herring industry scheme in its present form is not analogous to the agricultural marketing schemes in that it does not provide for domestic control by a body elected by the industry. The committee has, however, included this scheme in its review because of its close affinity with the other schemes, and urges that the particular circumstances of this industry—particularly the concentration of the fishing fleet in a few ports at any given time—both favour and require local disciplinary tribunals. The constitution of a limited number of district disciplinary authorities, each consisting of an independent adjudicator with legal experience sitting with two assessors and invested with power to impose monetary penalties, is accordingly recommended. With regard to the general administration of penalties under schemes providing for domestic control of industry, the committee is of opinion that the body administering the scheme should be responsible for the enforcement of discipline provided that this is the wish of the effective majority of the members and that certain safeguards are adopted.

Access to Mountains.

THE Standing Committee of the House of Commons which has been considering the Access to Mountains Bill concluded on 4th April its consideration of the measure, which in its amended form was ordered to be reported to the House. Readers who have followed the course of proceedings before the committee which have been briefly indicated in these columns will agree that the measure has been rendered far more practical as a result of the deliberations, and it may be recorded that at the final meeting of the Standing Committee Mr. RAMSBOTTOM, the Minister of Pensions, who has represented the Government, congratulated Mr. CREECH JONES, the promoter, on his handling of the measure. The latter expressed his gratitude for the co-operation of the Central Land Owners' Association and Sir LAWRENCE CHUBB, of the Commons, Open Spaces and Footpaths Preservation Society. It remains to note two important amendments incorporated into the Bill at the final meeting of the Standing Committee. The first of these, which was moved by the promoter of the Bill, is a clause defining the land to which the Bill would apply as " mountain, moor, heath or down," and containing a list of specifically exempted kinds of land, including agricultural land, park land, golf courses, racecourses and gallop grounds, and land connected with quarrying or mining operations. The second amendment contains important provisions for the prevention of fire. These are contained in a new clause conferring on the Minister of Agriculture and Fisheries power to close land where danger from fire exists. Mr. PEAKE, who moved the amendment, said that the prevention of serious damage by fire on the moors was the crux of the Bill. The only way to deal with it was by temporarily excluding the public at times when carelessly thrown cigarette ends or matches could start fires. Moor fires were an increasing evil. Monetary penalties might prove a very mild deterrent, but with a serious fire it was never possible to trace the person who started it. Temporary closing orders under the clause would, it was explained, operate in almost exactly the same way as orders in connection with foot and mouth disease. The occupier, or landowner, acting through the secretary of the local landowners' association, would get the local land commissioner to inspect the land and satisfy himself that it was in a dangerous condition in which fires might break out. The land commissioner would telegraph his report to the Ministry in London, and if the Minister were satisfied he would make a temporary closing order. Similarly, as soon as there was a good shower, the land commissioner would report again to the Minister, and the temporary closing order would be brought to an end. Lieutenant-Commander FLETCHER agreed that the danger from fire would be increased on moors to which the public were to have access under the Bill, and intimated that the new clause would be the subject of discussion before the report stage, to see whether it required strengthening. It should perhaps be recalled, in conclusion, that at an earlier meeting of the Standing Committee a statement was made to the effect that consultations were to take place between interested parties on the question of safeguarding catchment areas from possible pollution.

Thefts from Stores.

THE Council of the Magistrates' Association recently passed a resolution, to be forwarded to the Home Office, in which it expresses its grave concern at widespread thefts from popular stores and records its opinion that a responsibility of doing all that is practical to prevent petty theft rests upon those traders who display goods in open trays. Mr. CECIL LEESON, Secretary of the Association, has stated that complaints are constantly being received from practically all parts of the country regarding the number of thefts from stores with open counters. In some of these, owing to the shape of the counters, it was almost impossible for the girl assistants to exercise supervision, and apparently, there was a system whereby losses by theft were treated as inevitable and included in the accounts. Members of the association had visited some of the popular stores, and knew how relatively easy it was to steal from them, and, while they had received offers of co-operation from the managements in most cases, there were others where they were told that little or nothing could be done. An instance was given of a portion of a counter on which watches and other relatively valuable articles were displayed being covered with wire netting. This was done on the recommendation of certain members of the association in response to an invitation to make suggestions for improvements. It was suggested that the difficulty occasioned by the fact that the counters in some stores could be reached by children who were themselves able to keep out of sight might be obviated by the use of wire netting to prevent articles being purloined, but the association has been told that this is not a practical proposition. According to Mr. LEESON, it is no exaggeration to say that stores in which no precautions are taken are making more juvenile criminals than probably any other agency in the country. It is to be hoped that the urgency of the problem will be duly appreciated and that practical measures may be taken to remedy the position.

Smoke Abatement in London.

THE first meeting of the Greater London Advisory Council for Smoke Abatement was held at the Ministry of Health, on 29th March, under the presidency of Mr. KEELING, M.P., chairman of the council. Mr. WALTER ELLIOT, the Minister of Health, drew attention to the fact that the non-industrial parts of London suffered from their neighbours' smoke, while the residential parts had their own special problem in the form of domestic smoke. He was convinced that although they might be far from realising the architectural vision of fireless housing, the council would, with energy and application in the presentation of their ideals and policy, gradually bring them nearer that ideal. Mr. HERBERT MORRISON, M.P., recalled that there were, in Greater London, one hundred administrative authorities, and emphasised the need of joint action if headway were to be made. The problem fell into two parts. There was the question of smoke from factory and trade premises in relation to which the

authorities had power to make bye-laws to control the emission of smoke. There was also the question of smoke from the domestic chimney which, in the absence of compulsory powers, they could tackle by setting good examples as landlords and by a wide co-operative propaganda campaign. Domestic smoke, it was said, caused two-thirds or even three-quarters of the smoke damage in London, because of its particularly harmful composition, and the volume of domestic smoke to factory smoke was estimated in the proportion of two to one. The same speaker intimated that the London County Council was doing everything in its power to discover practical means of turning London into a smokeless city, and dwelt upon the injuries caused by smoke to health and the cost which local authorities incurred by its presence. The latter was put at £1 a head, or about £4,000,000 for the London County Council area, the equivalent to a county rate of 1s. 6d. in the £. So far fifty authorities have joined the advisory council as members.

Rules and Orders: Air-Raid Precautions—Compulsory Acquisition of Land.

SECTION 5 of the Air-Raid Precautions Act, 1937, empowers county and county borough councils, the Common Council of the City of London, metropolitan borough councils, and the councils of county districts, to purchase land compulsorily for any of the purposes of the Act by means of an order made by the council and confirmed by the Home Secretary. It is enacted by the same section that the provisions of ss. 161, 162, 174, 175 and 179 (*a*) and (*c*) of the Local Government Act, 1933, shall apply to such order as if for references to the Minister of Health there were substituted references to the Secretary of State, and for references to a local authority there were substituted references to any such council as aforesaid. Under powers conferred by the above-mentioned section of the Act of 1937, and ss. 161 and 175 of the Act of 1933 (and as regards the powers conferred by the last-mentioned section after consulting the Commissioners of Works) the Home Secretary has made the Air-Raid Precautions (Compulsory Purchase) Provisional Regulations, 1939. These are dated 10th March, 1939, and came into immediate operation as provisional regulations. The regulations contain provisions relative to the service of notices or other documents on owners, lessees or occupiers of premises in pursuance of the provisions of s. 161 of the Local Government Act, 1933, and prescribe the forms to be used by local authorities under the same section. The rules also provide that the prescribed distance for the purposes of s. 175 of the same Act, or the distance from any of the royal palaces or parks within which the exercise of the powers of compulsory purchase by order is subject to the provisions of that section, shall in the case of Windsor Castle, Windsor Great Park and Windsor Home Park, be two miles, and in the case of other royal palaces or parks be half a mile. The regulations do not apply to Scotland. They are published by H.M. Stationery Office, price 2d. net.

Local Government Superannuation: Further Regulations.

BRIEF reference must be made to certain further regulations which have been made by the Minister of Health under powers conferred by the Local Government Superannuation Act, 1937. These include the Local Government Superannuation (Transfer Value) Regulations, 1939, which with certain exceptions follow the draft regulations of that name (see 82 SOL. J. 702). In the circular which has been sent to the local authorities concerned, attention is drawn to an alteration of the definition of non-contributing service in para. 1 of the 1st Sched. The Local Government Superannuation (Administration) Regulations, 1939, follow in general terms the provisional regulations of the same name which were referred to in our issue of 9th July last (82 SOL. J. 555). Paragraph (1) of Art. 3 has, however, been extended so as to provide for the payment into the appropriate superannuation fund by an employing authority of the annual sum necessary in respect of any amount certified by the actuary in his report on the valuation of the fund under s. 22 of the Act as being the estimated liability imposed on the fund by that authority during the accounting period. Finally, the Local Government Superannuation (Actuarial Valuations) Regulations, 1939, which are dated 18th March, 1939, and came into operation forthwith as provisional regulations, have been made by the Minister under powers conferred by s. 22 (3) of the Act, and relate to the actuarial valuation of superannuation funds maintainable under the Act and the form of the report to be made by an actuary after any valuation of a fund. The sets of regulations referred to in the present paragraph are published by H.M. Stationery Office, price 3d., 2d., and 4d. respectively, explanatory circulars (Nos. 1795 S/23, 1797 S/24 and 1798 S/25) being available at 1d. each.

Recent Decisions.

IN *Chant* v. *Read* (*The Times*, 4th April), HALLETT, J., held that under s. 12 of the Married Women's Property Act, 1882, a married woman, who is killed in a motor-car collision by reason of the negligence of her husband while driving a car in which she is a passenger, has not vested in her at the date of her death a cause of action against her husband for damages for the loss of her normal expectancy of life. A claim for contribution as a tortfeasor under s. 6 (1) (*c*) of the Law Reform (Married Women and Tortfeasors) Act, 1935, against a husband by the other person whose vehicle was involved in an accident in which the wife was killed was, therefore, not maintainable.

In *Shaw, S. M.* v. *Shaw, J. F.* (*The Times*, 4th April), Sir BOYD MERRIMAN, P., held that a husband who without excuse refused to start cohabitation after the expiration of an agreement to postpone the inception of cohabitation had deserted his wife; and, the desertion having lasted over the statutory period, his lordship pronounced a decree *nisi*.

In *Burfitt and Another* v. *A. and E. Kille* (*The Times*, 5th April), ATKINSON, J., held that an infant was entitled to damages at the hands of the defendants, who were general furnishers and toy and fancy goods dealers, in respect of personal injuries sustained as the result of a toy pistol, sold by the defendants to another boy, back firing. His lordship found that the pistol was one wholly unsuitable for sale to school-boys and constituted a dangerous thing in the hands of the boy to whom it had been sold. It was also held that a sale of blank cartridges was illegal under the Firearms Act, 1937. Special damages were also awarded to the infant plaintiff's father.

In *Bennett, A. W.* v. *Bennett, A. E.* (*by her Guardian*) (*The Times*, 6th April), BUCKNILL, J., held that a wife, who had deserted her husband for thirty-one years and, eighteen months before the presentation of the present petition for dissolution of marriage, had been certified as insane and had since remained in a mental hospital, had not deserted the petitioner for a period of at least three years immediately preceding the presentation of the petition within the meaning of the Matrimonial Causes Act, 1937. The respondent's insanity raised the presumption that she was no longer capable of forming a reasoned judgment on the matter of her relations with her husband and, after she had been certified as insane, the burden of proof that she retained a rational intention to desert remained on the husband who had failed to discharge it. See *Jones* v. *Newtown and Llanidloes Guardians* [1920] 3 K.B. 318.

In *Kayser, A., Presumed Deceased, Kayser, E., Presumed Deceased* (*The Times*, 6th April), LANGTON, J., gave leave to swear that the persons named in the applications died on or since 1st October, 1938, whan an aeroplane disappeared with all aboard while on a flight from Frankfort-on-Main to Milan. It was stated that the aeroplane was last heard of when flying over the Alps and that no trace of passengers, crew or wreckage had been discovered despite diligent search.

Criminal Law and Practice.

JURIES AND COMPROMISE VERDICTS.

No better illustration has been forthcoming for a long time of the meticulous care which judges must use in summing up to juries than the case of *R.* v. *Mills*, 55 T.L.R. 590; 83 Sol. J. 259, in which the Court of Criminal Appeal on 27th March, 1939, allowed an appeal from a conviction of obtaining a cheque by false pretences.

In delivering the judgment of the court the Lord Chief Justice directed a criticism against the form of words used by the learned recorder in directing the jury. What had happened was that after the jury had retired to consider their verdict they returned into court and asked for a further direction as to the meaning of intent to defraud. The recorder gave this direction, and then, with regard to another message from them that they had not agreed upon their verdict, he quoted from the summing up of Mr. Justice Finlay, as he then was, in *R.* v. *Klein* (a case tried at the Central Criminal Court in February, 1932) to the effect that it was of the utmost importance that a jury should come to a conclusion one way or the other at the end of a trial, because it was burdensome upon all concerned, including the accused, as it only meant that unless the jury did come to a conclusion, the matter had got to be tried all over again, and therefore they should see the importance and necessity of coming to a conclusion one way or the other.

The actual words of the learned judge were then quoted: "When you have got one or two, a small minority, in the jury who are thinking perhaps differently from the others, it is quite consistent with their oaths as jurymen that they should, after hearing what the others have got to say, come to the conclusion that they themselves might be wrong, and it would be consistent with the discharge of their duty and with their oaths under those circumstances, if they thought they were wrong, to accept the view of the majority and come to the conclusion that the majority might be right, and in that way you come to a conclusion in which you all agree by the exchange of view, and perhaps a man in the minority might say: 'Well, I may be wrong,' yet it is quite consistent with the discharge of your duty."

The learned recorder then went on to tell the jury to reconsider the matter, and told them that he could not release them until they had come to a conclusion. After a retirement of eight minutes, they returned with a verdict of guilty, and the defendant was sentenced to nine months' imprisonment.

The criticism of this direction offered by the Lord Chief Justice in delivering the judgment of the Court of Criminal Appeal was that, although nothing could have been further from the mind of the learned recorder than to create an impression contrary to the well-recognised impression, the use of words implying that there are circumstances in which the minority on the jury might give way to the majority, might lead to the subversive impression that, for the sake of uniformity or convenience, it would be consistent with their oaths to make it appear that the jury accepted a view which in fact they did not accept. "A loose acquiescence by a minority in the view of the majority for the sake of conformity, would not merely be most undesirable, but flagrantly wrong." His lordship referred in particular to the words in the direction: "I cannot release you until you have come to a conclusion" as, in combination with the other words used, conveying a subversive impression to the minds of the jury. "Nothing is more primary or fundamental," he continued, "than the duty of each juror to form and express his opinion. Loose acquiescence would be not only indefensible, but actually wrong, and a violation of his oath as a juror." The appeal was accordingly allowed.

One of the earliest authorities on this point was *Watts* v. *Brains*, 2 Cro. Eliz. 778, in which the court "severally delivered their opinions, that if one make a wry or distorted mouth, or the like countenance upon another, and the other immediately pursues and kills him, it is murder; for it shall be presumed to be malice precedent; and that such a slight provocation was not sufficient ground or pretence for a quarrel; and so delivered the law to the jury, that it was murder . . ."

In spite of that carefully considered opinion on what appears to have been at that time a difficult point of law, the jury retired and "eight of them agreed to find him not guilty, but the other withstood them, and would not find it but to be murder. On the next day morning, two of the four agreed with the eight, to find him not guilty; and afterwards the other two consented in this manner, that they should bring in and offer their verdict not guilty; and if the court disliked thereof, then they all should change the verdict, and find him guilty." They accordingly returned to court and proclaimed a verdict of not guilty, but the court "much misliking thereof, being contrary to their direction" examined each one of them and discovered that ten only affirmed their verdict while the remaining two revealed how their agreement had been reached. The jury was then sent back, and on returning found a verdict of guilty. The defendant was duly hanged, and all the ten jurors who affirmed their verdict of not guilty were fined.

In addition to the interesting sidelight that this case affords on popular notions in Elizabethan times as to what was sufficient provocation to justify killing, it affords a useful example of the immutability of one of the fundamental principles of English jury law. It is to be observed that two of the ten jurors in that case said that they agreed on a verdict of "not guilty" because "they could not endure or hold out any longer," so that it is quite clear that the verdict was a "compromise verdict."

In another somewhat more recent case (*R.* v. *Flood* (1914), 10 Cr. App. Rep. 227), it was said on behalf of the appellant that the verdict showed unmistakeable signs of a compromise verdict, that the jury were in a hurry and that they had had no food from breakfast until four o'clock. There were four counts in the indictment, charging assault with intent to ravish, indecent assault, assault causing actual bodily harm, and common assault. There was a serious flaw in the evidence of identification, and the jury found a verdict of common assault, for which the defendant received the maximum sentence of twelve months' imprisonment.

Lord Coleridge, J., in delivering the judgment of the court allowing the appeal, said: "A jury must be sure beyond reasonable doubt, and they ought to be unanimous and clear in their belief in the identity of the man charged, before convicting; a compromise verdict is a very undesirable thing in any circumstances. In a criminal case involving the liberty of the subject it is not only undesirable, but it is wrong. The verdict was quite out of keeping with the facts proved, and must have been a compromise verdict."

The strictness with which the rule was laid down in *Mills' Case*, that even the possibility of a wrong impression of their duty being unintentionally given to a jury is sufficient to quash a conviction is an extension of the rule against compromise verdicts which is well within the spirit of the dictum of the Lord Chief Justice that justice must not only be done, but must manifestly be seen to be done.

SOLICITORS' BENEVOLENT ASSOCIATION.

The monthly meeting of the Directors was held at 60, Carey Street, W.C.2, on Wednesday, 5th April. Mr. Harvey F. Plant, M.C., was in the chair, and the following Directors were present: Mr. H. White, M.A., Vice-Chairman (Winchester), Mr. G. L. Addison, Mr. G. C. Blagden, M.A., LL.B., Mr. W. E. M. Blandy, M.A. (Reading), Mr. E. Bramley, M.A., LL.D., J.P. (Sheffield), Miss Mary Brown (Grimsby), Mr. A. J. Cash (Derby), Mr. John Cherry, M.A., Mr. W. Sefton Clarke, M.A. (Bristol), Sir Edmund Cook, C.B.E., LL.D., Mr. C. H. Culross, Mr. T. S. Curtis, Mr. G. C. Daw (Exeter), Mr. W. H. Day (Maidstone), Mr. E. F. Dent, Mr. G. Keith, O.B.E., Mr. C. G. May, Mr. L. F. Paris (Southampton), Mr. F. S. Stancliffe, B.A. (Manchester), and the Secretary. £2,321 10s. was distributed in grants to necessitous cases and seventy-four new members were admitted.

Desertion as a Ground for Divorce.

SOME RECENT CASES—II.

(*Continued from p.* 268.)

If a husband and wife have agreed to separate then *primâ facie* there has not been desertion "without cause." As Bucknill, J., maintained in *Tate* v. *Tate* (1938), 82 Sol. J. 934, "it is difficult to say that a wife is forsaken or abandoned by her husband if she has in fact agreed with him to live separate and apart from him."

A separation agreement, nevertheless, is not conclusive evidence against desertion. In deciding whether or not there has been desertion, the court is entitled to look at all the facts of the case. "In my view," held Bucknill, J., "the husband cannot rely upon the deed as protecting him from his original wrongful acts of desertion if it is clear on the evidence that he has treated the deed as not binding upon him in any way." In *Tate* v. *Tate*, the husband, in fact, had deserted his wife before the separation agreement was made and he had only paid thereunder for a month or so. Accordingly, the court granted a decree.

In *Watson* v. *Watson* [1938] P. 258; 82 Sol. J. 714, a married couple entered into a deed of separation after the husband had deserted the wife, but again, its terms were not observed by him, and the wife never attempted to enforce the agreement against him. "I think it is quite clear," said Hodson, J., "that if the separation is really, on investigation of the facts, found to be a separation by agreement, there can be no desertion, and, of course, a document such as a separation agreement is one of the matters to be examined," but here the parties did not separate under a deed at all and the execution of the separation agreement was only an incident in that desertion.

Similarly, in *Starkey* v. *Starkey* (1938), 82 Sol. J. 745, Hodson, J., held that desertion continued notwithstanding that a separation agreement was entered into where, from the start, the husband had treated the agreement as if it were not an agreement at all.

A separation by consent, however, cannot be changed into desertion by a mere refusal to resume cohabitation in breach of the covenants of a separation deed entered into *bona fide*: *Pardy* v. *Pardy* (1939), 2 All E.R. 258.

Again, the fact of non-payment is not in itself sufficient to cause the repudiation of a separation agreement. In *Ratcliffe* v. *Ratcliffe* (1938), 3 All E.R. 41, Langton, J., declined to accept the proposition "that the mere fact that a man, after a separation agreement has not kept up his payments thereunder is sufficient to enable the court to say that the agreement is thereby repudiated." On the facts before him, however, he found that a case of desertion was made out.

There may be desertion notwithstanding that there has been no cohabitation of any kind and although the petitioner, in the first instance, had consented thereto. In *Shaw* v. *Shaw* (*The Times*, 4th April, 1939) Sir Boyd Merriman decided that the petitioner had assented to the non-cohabitation for a short time only and that, from the expiration of that time, desertion began.

Under the old law, it was held in *Stevenson* v. *Stevenson* [1911] P. 191 that the filing and prosecution of a suit for judicial separation precluded a petitioner from successfully pleading that a period of desertion was running during the time that such a suit was being maintained. This decision was followed by Langton, J., in *Marthews* v. *Marthews* (1938), 82 Sol. J. 953, where the petitioner had previously filed a petition of judicial separation within the three years' period, which petition had been dismissed on the petitioner's own application. "No one," held Langton, J., "could invoke the assistance of the court, with all that such assistance connoted, during the pendency of the petition and at the same time claim that during the period that the assistance was being invoked the other spouse was guilty of desertion." Whether the intervening petition is one of judicial separation or divorce is immaterial (*Walton* v. *Walton* (1938), 82 Sol. J. 954). It equally suspends the legal obligation upon the spouses to live together. In *Bush* v. *Bush* (1939), 83 Sol. J. 16, Sir Boyd Merriman expressed himself entirely in agreement with these decisions.

The institution and prosecution of divorce proceedings, however, does not absolutely terminate the offence of desertion. It only precludes the petitioner from asserting that the period of desertion continued to run during those proceedings, *Jordan* v. *Jordan* (reported at p. 300 of this issue).

When, however, the previous proceedings are within three years of the presentation of a petition it is doubtful whether the statutory period can be obtained by ignoring the period during which the previous proceedings were pending and by aggregating the periods before and after that period. In *Jordan* v. *Jordan*, Sir Boyd Merriman expressly disclaimed the suggestion that in *Bush* v. *Bush* he had encouraged such an idea.

The mere filing of a petition, nevertheless, will not interrupt desertion. In *Gibbs-Smith* v. *Gibbs-Smith* [1939] W.N. 33; 83 Sol. J. 260, Henn Collins, J., held that the filing of a petition which was not followed by service did not suspend the obligation to cohabit.

The deserting spouse, of course, cannot prevent the consequences of his desertion by himself proceeding with a petition for divorce. "It cannot, in my opinion," said Hodson, J., in *Chapman* v. *Chapman* [1938] P. 93; 82 Sol. J. 216, "be contended that the deserting husband could in that way by his own act prevent desertion running against himself." In that case, however, the wife had filed an answer denying adultery and cross-charging her husband with adultery and desertion. The wife, therefore, "may be said to have put it out of her husband's power to return to her and thus to have prevented desertion running against him." Hodson, J., none the less, held that the desertion had continued uninterrupted. "It was the husband who took the step which effectively prevented the wife returning to him and, in my view, nothing which the wife did afterwards by the presentation or prosecution of the proceedings altered the position. The obstacle was put up by her husband and, so long as it stood in her way, no action taken by the wife prevented desertion running against the husband."

In *Johnson* v. *Johnson* (1938), 82 Sol. J. 698, advantage was taken of s. 6 (3) of the Matrimonial Causes Act, 1937, which provides that a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since the granting thereof be deemed immediately to precede the presentation of the petition.

Four years after his wife had deserted him, the petitioner presented a petition for judicial separation which eventually was dismissed on his own application. "It appeared, therefore," observed Hodson, J., "that if the petitioner had prosecuted his petition for judicial separation and had obtained a decree, he could have presented a petition for divorce and relied on the period of desertion immediately preceding the pronouncement of that decree. It would be an odd thing if the petitioner were to be in a worse position because he had abandoned the petition for judicial separation and started new proceedings." His lordship did not think he was bound so to hold and granted a decree. This judgment, however, is not altogether satisfactory. In *Bush* v. *Bush*, Sir Boyd Merriman said that he was not satisfied that its reasoning was sound.

Another form of interruption which places it out of a man's power to be with his wife is imprisonment. If a man has deserted his wife the fact that he afterwards commits

a criminal offence and is sentenced to imprisonment cannot affect the petitioner's rights. Thus in *Williams* v. *Williams* (1938), 4 All E.R. 445, Croom-Johnson, J., drew the inference that the husband had the intention of deserting his wife because he remained away from her before he was imprisoned and did not go back to her after he was released.

Finally, it is interesting to note that Langton, J., in *Marthews* v. *Marthews*, and Hodson, J., in *Chapman* v. *Chapman*, saw no distinction between the words "without reasonable excuse" and the words "without cause." Cases under the Matrimonial Causes Act, 1857, therefore, cannot be distinguished from cases to be decided under the Act of 1937, on the ground of such difference in terminology.

Company Law and Practice.

Some Consequences of a Dissolution.

A COMPANY'S existence may be brought to an end in one of two ways. If the regular course is adopted the company will be put into liquidation and its affairs will be adjusted by a liquidator. After all its affairs are fully wound up, then, if the winding-up was a compulsory one, the court will make an order dissolving the company as from the date of the order. It is the duty of the liquidator to report the making of this order to the registrar of companies. If the winding-up was a voluntary one, the liquidator has to produce a final account and lay it before a general meeting of the company and a meeting of its creditors. Within a week of the date of these meetings the liquidator must send a copy of his final account to the registrar. The registrar registers the account and certain other returns which have to be made to him, and on the expiration of three months from such registration, the company is dissolved. Whether dissolution follows a compulsory or a voluntary winding-up, the court has power, under s. 294 of the Companies Act, 1929, within two years of the date of the dissolution, to declare the dissolution void. Any proceedings can then be taken such as might have been taken if the company had never been dissolved.

The other way in which a company may cease to exist is this. If the registrar has reason to believe that a company is not carrying on business, he may make certain inquiries and publish certain notices. I do not wish to go in detail into the steps to be taken because they can be found quite easily by referring to s. 295 of the Companies Act, 1929, and also because I adverted not long ago to this topic of defunct companies. Put quite shortly, the registrar can, in certain circumstances, and after observing certain formalities, strike a defunct company off the register. The company is dissolved on publication in the "Gazette" of a notice stating that this has been done. There is, however, an important difference between a dissolution effected in this way and a dissolution following a regular winding-up. After the latter kind of dissolution, as we have seen, the company can be revived by an order of the court made within two years of the dissolution. Where a defunct company has been struck off the register under the powers conferred by s. 295, the court has a similar power, but this latter power can be exercised at any time within twenty years of the dissolution. When, therefore, a company's existence has been prematurely determined, it is very important to bear this distinction in mind. If more than two years have elapsed since the dissolution and if that dissolution was effected in the ordinary way after a winding-up, there is no way of bringing the company back to life.

Now, one practical result of this can be seen where a company has ceased to exist without effectively divesting itself of all its property. Normally, of course, its assets will have been distributed or all its assets and undertaking conveyed, transferred or otherwise disposed of. But something may have been overlooked. In such a case it is provided, by s. 296 of the Companies Act, 1929, that—

> "Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections of this Act, be deemed to be *bona vacantia* and shall accordingly belong to the Crown or to the Duchy of Lancaster or . . .," etc.

The "two last foregoing sections of this Act" are ss. 294 and 295, to which I have already referred, and the effect of the reservation in s. 296 is to make it possible to recover within the respective limits of two and twenty years property which was not effectively disposed of by the company before its dissolution. Once the prescribed number of years has passed, any property to which s. 296 refers becomes indefeasibly vested in the Crown or other entity claiming it as *bonâ vacantia*.

Section 296 does not, however, include all property. "Property held by the company on trust for any other person" is excluded and is not deemed to be *bona vacantia*. In this connection let us first look at *In re No. 9 Bomore Road* [1906] 1 Ch. 359. In that case a company which owned certain leaseholds went into voluntary liquidation for the purposes of reconstruction. A new company was formed and an agreement was entered into between the old and the new companies for the sale and transfer to the new company of all the assets of the old company. The new company then went into possession of the leasehold premises, but by a mistake no assignment was ever executed. The old company was duly dissolved and it was not until many years later that the new company discovered that its title to the leaseholds had never been perfected. Under the contract the new company was entitled in equity, but the legal estate remained outstanding—quite where, nobody knew. It was not possible to revive the old company in order to get a proper assignment and accordingly the new company applied to the court for an order under the Trustee Act, 1893, appointing a new trustee of the premises and vesting the residue of the term in the trustee to be appointed. Warrington, J., considered that it was expedient for a new trustee to be appointed and, a new trustee having been appointed, there was no question that the court could make the necessary vesting order. Sections 44 and 51 of the Trustee Act, 1925, contain the provisions which are to-day effective for the making of vesting orders, and under s. 41 of that Act the court has power to appoint a new trustee whenever it is expedient.

The Law of Property Act, 1925, also contains a provision which is material to the matters we are considering. Section 181 provides as follows:—

> "Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate."

This section has been considered in *In re C. & H. Crichton (1921), Ltd.* [1932] W.N. 208. The facts are similar to the facts in *In re No. 9 Bomore Road*, *supra*, but the result is not quite the same. There were again two companies, an old and a new one. The old one agreed to transfer its undertaking and assets to the new one, and was then voluntarily wound up. Unhappily no conveyance was ever executed of certain freehold property which belonged to the old company and which it had been intended to convey to the new company. When the new company discovered the mistake, it was too late to rectify it by reviving the old company. The matter was brought before the court on summons, and in substance the new company got the same relief which had been given to the new company in *In re No. 9 Bomore Road*, *supra*. In form, however, the relief was different. In the earlier

case the court, regarding the dissolved old company as a trustee for the new company, had appointed a new trustee in its place on the grounds that it was expedient to do so. It had then vested the legal estate in the property in the new trustee. The new company had merely an equitable title at all material times. In the more recent case the position was not quite the same owing to the passing in the meantime of the Law of Property Act, 1925. Acting under s. 181 of that Act the court made an order that a legal estate in the property be created for an estate corresponding to the legal estate therein which had been vested in the old company before its dissolution. The legal estate having, as it were, been called out of abeyance, the court then conferred it on the new company, thus putting the new company in the position in which it would have been if a proper conveyance had been executed. Under the new procedure the new company is a step further than under the old. It actually acquires the legal estate. Further, there is now no need to appoint a new trustee, since the court can under the Trustee Act, 1925, vest the property in any person in whom it appears right and proper to vest it. It will normally in a case such as those which we have considered vest it in the new company or other person who would have acquired it in the regular way but for an oversight.

The Law of Property Act, s. 181, has also introduced another important distinction. In proceedings under the Trustee Acts it was not possible to deal with property, the beneficial interest in which remained in the dissolved company at the date of dissolution. The court acting under the Trustee Acts was giving effect to the maxim that equity will not allow a trust to fail for want of a trustee. Where there was an equitable interest in some existing person and the bare legal estate had, as it were, gone astray, the court interfered to preserve the equitable interest by vesting the necessary legal estate in some trustee of its own choosing. But it had no way of interfering where both the legal estate and the beneficial interest had disappeared together. Most cases in practice are, it is true, cases where only the legal estate has disappeared, the beneficial interest having become vested in some other person before the dissolution of the old company. But there is no reason why this should always be so. A company might conceivably dispose of its property gradually to a number of different persons. It might specifically convey or transfer specified items without at any time dealing with its property in such general terms as would pass anything which had been overlooked. In such a case there would be no person entitled after its dissolution to a beneficial interest in any part of its property not disposed of by the specific conveyances or transfers. The court would not then proceed under the Trustee Act. It could not proceed under the Companies Act after the expiration of the two years' or twenty years' period, as the case might be. But it could, it is submitted, proceed under the Law of Property Act. Section 181 of that Act is not limited to bare legal estates, and there seems no reason why the court should not, in a proper case, defeat s. 296 of the Companies Act by vesting property of the dissolved company in some existing person. Such a case has never, so far as I am aware, arisen, and it is a little difficult perhaps to imagine circumstances in which some person not having a beneficial interest would have a strong claim to the property. I imagine that a case might be made where a company had been dissolved for purposes of reconstruction and as a result of some confusion part of its property had never been agreed to be transferred. Whether or not a case is likely to arise, I cannot say. If it did, it would, I think, be due to carelessness of no small degree.

A Conveyancer's Diary.

In another column appears a letter from Mr. F. L. Hetley upon which I propose to comment.

A Point on the Over-reaching Effect of Conveyances by Trustees for Sale.

Our correspondent draws attention to the opinion expressed by Mr. Emmet in his "Notes on Investigation of Title" (12th ed., p. 392), and he says that Mr. Emmet suggests that, where two or more persons who were tenants in common or joint tenants absolutely entitled and now hold the legal estate upon the statutory trusts, then if such persons are expressed in a conveyance to convey "as beneficial owners," the over-reaching powers of trustees for sale will not take effect, and that in such cases the vendors should be expressed to convey "as trustees" in order to secure the benefit of the over-reaching provisions of the L.P.A., 1925.

Now in fact Mr. Emmet does not say that. What he says is that if vendors holding as statutory trustees are also absolutely beneficially entitled, then if they convey "by virtue of their being beneficially entitled to both the legal and equitable estates" the over-reaching provisions will not apply.

Our correspondent evidently thinks that Mr. Emmet means that if such vendors are expressed to convey "as beneficial owners," that being only a short way of saying what I have quoted from Mr. Emmet's book. I do not know whether the learned author would agree with that.

Mr. Hetley also says that Mr. Emmet's opinion is contrary to that expressed by other authorities named; but I think he will find that in those other authorities to which he refers the point being discussed was not Mr. Emmet's point about the over-reaching effect, but only as to what covenants for title a purchaser from such vendors is entitled to require. I will deal with that point later. For the present I take Mr. Emmet's proposition and see how far it is justified. I will assume (as our correspondent has assumed) that Mr. Emmet would agree that the expression "as beneficial owner" has the same meaning as the longer expression which he uses, which may or may not be so; but I think it will be seen that, if I am right, it is immaterial which expression is employed.

First of all, it is necessary to see what the over-reaching provisions are.

By s. 2 (1) of the L.P.A., 1925, it is enacted that "A conveyance to a purchaser of a legal estate in land shall over-reach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

> "(ii) The conveyance is made by trustees for sale and the equitable interest or power is at the date of the conveyance capable of being over-reached by such trustees under the provisions of subsection (2) of this section or independently of that subsection, and the statutory requirements respecting the payment of capital money arising under a disposition upon trust for sale are complied with."

It will be observed that this clause does not say "The conveyance is made and expressed to be made by trustees for sale," and in my view it is immaterial whether the capacity in which the conveyance is made is expressed or not, and if expressed whether it is correctly expressed or not.

If, in fact, the vendors are trustees for sale and make a conveyance the over-reaching provisions of the clause take effect.

In the case of persons formerly holding absolutely and beneficially in undivided shares or as joint tenants and at the date of the conveyancing holding as statutory trustees, the only capacity in which they could convey the legal estate is as such trustees and, although expressed to convey "as beneficial owners," or using Mr. Emmet's phrase, in fact the conveyance is made by trustees for sale and takes effect as such.

In this connection reference may be made to s. 63 (1) of the L.P.A., 1925, which reads:—

"Every conveyance is effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in or to or on the same."

It follows that if the conveying parties are trustees for sale the legal estate will pass in whatever capacity they are expressed to convey.

There is, however, sub-s. (2), which reads:—

"This section applies only if and so far as a contrary intention is not expressed in the conveyance and has effect subject to the terms of the conveyance and to the provisions therein contained."

I mention this because it might be said that this subsection has some bearing upon the point. I do not think that it has, for if the habendum be "To hold to the purchasers in fee simple," it could surely not be contended that a "contrary intention" is expressed by the use of the words "as beneficial owner" or "as trustees." The obvious intention of the deed is to pass the legal estate in fee simple if, in any capacity, the vendors have power to convey it.

I come now to the other point which is incidentally introduced by our correspondent.

I have referred to the passage in "Prideaux" which he mentions and find that there the learned editors are merely dealing with the question what covenants for title a purchaser is entitled to require from vendors holding upon the statutory trusts who are absolutely entitled in equity either as tenants in common or as joint tenants. The authors of "Prideaux" consider that the purchaser is entitled to such qualified covenants for title as an absolute owner at law and in equity is bound to give, and that, therefore, the vendors should be expressed to convey "as beneficial owners." I have not the "Encyclopædia of Forms and Precedents" at hand at the time of writing, but I find that the editors of "Key and Elphinstone's Precedents" (13th ed., Vol. I, p. 590) and the editors of Dart's "Vendor and Purchaser" (8th ed., p. 497) express the contrary view. They consider (and I venture to agree) that as the vendors have by statute been made trustees upon the statutory trusts, and only as such are in a position to convey the legal estate, the purchaser is only entitled to the more qualified covenants for title which trustees are bound to give, and should therefore be expressed to convey "as trustees" in order to imply those covenants.

In my view, the words "as beneficial owners" or "as trustees," are not inserted to show the capacity in which the conveyance is made, but simply to imply the appropriate covenants for title and have no other significance or effect whatsoever.

There is a point, however, with regard to this that I do not recollect having been raised in the books. It is, to say the least, doubtful whether any covenants for title are implied if trustees for sale are expressed to convey "as beneficial owners."

By s. 76 (1) of the L.P.A., 1925, it is enacted that certain covenants are to be implied and (*inter alia*)—

"(A) In a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Pt. II of the Second Schedule to this Act."

Trustees holding upon the statutory trusts do not convey and cannot convey the legal estate as beneficial owners and cannot be said to "*convey*" as such, although expressed to do so. Purchasers from such trustees should not, therefore, in my opinion, in their own interests, insert the words "as beneficial owners" instead of "as trustees." If they do they may find that they have no covenants for title at all.

Landlord and Tenant Notebook.

Reduction of Compensation for Disturbance Under A.H.A., 1923.

"Now I must admit," said Bankes, L.J., in *Westlake* v. *Page* [1926] 1 K.B. 298, C.A., "that I have the greatest difficulty in giving any intelligible meaning at all to sub-s. (8) [of A.H.A., 1923, s. 12], that is to say, I cannot at present see any state of facts to which it could possibly apply. . . . But, on the other hand I have a difficulty in saying, in reference to any provision of an Act of Parliament, that it can have no meaning at all. . . . Although I cannot at present see what those circumstances may be I must assume that there may be such."

Section 12 of A.H.A., 1923, is the "security of tenure" section, entitling the good tenant to compensation for disturbance. The measure is dealt with by sub-s. (6), but special provision is made for the case of a tenant who has another holding or holdings to go to by sub-s. (8).

Sub-section (6) first lays down that compensation shall be "a sum representing such loss or expense directly attributable to the quitting of the holding as the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce," etc. Having done this, the sub-section continues: "but for the avoidance of disputes, such sum shall, for the purposes of the Act, be computed at an amount equal to one year's rent of the holding, unless it is proved that the loss and expense so incurred exceed an amount equal to one year's rent," etc., and in that case the whole amount is to be recoverable "up to a maximum amount equal to two years' rent of the holding."

The sub-section thus provides for two classes of cases: those in which a year's rent is the measure, and those in which more than a year's rent is the measure, of the loss unavoidably incurred. It seems to follow that if a tenant has another holding and can reduce expense and loss by moving his belongings and stock to it, the loss *unavoidably* incurred is diminished accordingly. But sub-s. (8) goes on to make special provision for this eventuality. "In any case where a tenant holds two or more holdings . . . and receives notice to quit one or more but not all of the holdings, the compensation . . . shall be reduced by such amount as is shown to the satisfaction of the arbitrator to represent the reduction (if any) of the loss attributable to the notice to quit by reason of the continuance in possession by the tenant of the other holding or holdings."

The facts of *Westlake* v. *Page*, in so far as relevant to the judicial bewilderment, were that the appellant farmed land of which he owned part, the rest consisting of parcels part of which were let to him by the respondent, part by some one else. The respondent gave him notice to quit, and in the same document invited him to arbitrate as to the rent; in the special case stated by the arbitrator the substantial question was whether this barred the claim to compensation under sub-s. (1) (*e*). But the court was also asked to say whether, if the tenant was entitled to compensation, s. 12 (8) was to be interpreted to mean that the minimum of one year's rent was reducible in the case of a tenant holding two or more holdings, or whether it only applied if the tenant proved that his loss or expense under s. 12 (6) exceeded one year's rent of the holding.

Not having the facts before it, the court (while answering the first point in the tenant's favour) had to content itself with the answer that as a matter of law the minimum was reducible in the case of a tenant holding two or more holdings and leave it to the arbitrator to say what, if any, was the reduction to be allowed; laying, as Bankes, L.J., said, great emphasis on the "if any."

Warrington and Scrutton, L.JJ., came to similar conclusions. The latter thought that sub-s. (8) could hardly apply

when the tenant proved a loss exceeding more than a year's rent, for then he was to recover the whole loss. His lordship was, however, unable to foresee all the possible circumstances that might arise, and all that could be done for the present was to say that the court could not say, as a matter of law, that in no circumstances could the conventional one year's rent be reduced by virtue of sub-s. (8). Warrington, L.J., also holding that it was impossible to say that the sub-section could not in law apply to the conventional sum, came the nearest to suggesting (but in non-committal terms) what circumstances might be within its scope. " It suggests that the arbitrator may reduce the amount of the compensation if he thinks that the tenant, instead of removing his stock to a new holding, ought to have removed it to a holding of which he continues in possession." The hypothesis works as long as one assumes (and why not ?) that the Legislature had not only forgotten the general duty of an aggrieved party to minimise damages but also the specific limitation of loss, in sub-s. (6), to what is " unavoidably " incurred " upon or in connection with " sale or removal, etc., which is in keeping with the principle underlying that duty.

No facts were before the Court in *Westlake* v. *Page* of which it could be said whether they fell within or did not fall within the provision of sub-s. (8); but we have now had a decision, *Bebb* v. *Frank* (1939), 83 Sol. J. 194, C.A., in which the arbitrator and the county court judge thought the sub-section applied, and the Court of Appeal has decided that it does not. What is perhaps curious is that the latter opinion appears to be based on the view that it never could.

The appellant tenant, in the recent case, was given notice to quit a holding consisting of two enclosures of land with a wooden shed, held at a rent of £100 a year. Half-a-mile away he had a 132-acre farm with a house and garden, farm buildings and lands, of which his tenancy was not determined. The arbitrator, dealing with the claim for compensation for disturbance, reduced the £100 by £89 10s. by virtue of s. 12 (8).

The Court of Appeal considered that it was impossible to construe the sub-section as a direction to disregard the minimum provision in sub-s. (6) if the actual loss was less than a year's rent. The provision that the sum payable was to a one year's rent was an overriding provision. As regards *Westlake* v. *Page*, the observations on the subject made in that case being *obiter dicta*, the present court was not bound by them.

So we are still without a set of facts to which sub-s. (8) can apply, and, in view of the interpretation of " but for the avoidance of disputes, such sum shall, for the purposes of this Act, be computed at an amount equal to one year's rent of the holding " as an overriding provision, the possibility of any such facts arising seems more remote than ever. The theory that it might apply when more than one year's rent is claimed disregards not merely the speculative part, but a reasoned part, of one of *obiter dicta* in the older case; that of Scrutton, L.J., which I mentioned above. The difference between the two decisions seems to be that in the one the Court of Appeal said s. 12 (8) must mean something, in the other that it didn't; or at all events could only apply, *pace* Scrutton, L.J., to a claim for more than one year's rent.

If the problem ever reaches the House of Lords, it may perhaps be remarked upon that in *Westlake* v. *Page* the judgments all use the expression " the conventional sum " to describe the one year's rent, while in *Bebb* v. *Frank*, Scott, L.J., refers to the relevant enactment in sub-s. (6) as " the minimum provision." For it was laid down in *Minister of Agriculture and Fisheries* v. *Dean* [1924] 1 K.B. 851, C.A., that when (in unusual circumstances) a tenant suffered no loss and incurred no expense at all, he had no right to any compensation for disturbance whatever. In his judgment in that case Bankes, L.J., said: " Where a tenant proves that he has suffered loss or expense attributable to his removal as indicated in sub-s. (6), it is reasonable enough that he should be relieved of the trouble and difficulty of proving the actual amount . . ." " Conventional " seems, then, to be the apt expression. Now an Act of Parliament, however unreasonable, must be interpreted according to its meaning as long as that meaning is plain; but if there were room for doubt whether this " conventional " provision is an overriding one, our reason would certainly tell us that if ever there were a case for reduction of the conventional sum by virtue of sub-s. (8), it would be one in which a farmer was disturbed in his possession of a couple of fields and a shed half-a-mile from his farm.

Our County Court Letter.

THE SCOPE OF THE GAMING ACT.

In *Landes Stores Limited* v. *Appleby*, recently heard at the Salford Hundred Court of Record, the plaintiffs claimed £19 9s. 6d. as assignees of Mr. H. L. Lande, who had lent money to the defendant. The evidence of the assignor was that he was a friend and neighbour of the defendant, who, in June, 1938, asked for a loan of £10. The assignor advanced that amount, in return for a post-dated cheque, and the parties subsequently played bridge at the house of a mutual friend. The defendant then borrowed another £10, in two £5 notes, and his cheque for £10 was returned to him in reliance on his promise to give another cheque for £20. The two £5 notes were not used in settling the liabilities of the game of bridge. Subsequently the party played chemin de fer for a few minutes, but the amount which changed hands was only about 30s. The defendant did not give a cheque for £20 as promised, but was afterwards credited with ten shillings and sixpence, won by him at a golf club. No suggestion had been made that the chemin de fer was played in an unsatisfactory manner, nor that the amount lost by the defendant thereat was £12 10s. The game was only played while the ladies were putting on their hats and coats. The stakes were two and sixpence a hundred at bridge, at the house, and one and sixpence at the golf club. It was conceded that the debt was assigned to the plaintiff company (of which the assignor was a director) for £12 10s. This was merely to enable the company to show a profit on the transaction, and was not the exact amount owing to the assignor. Corroborative evidence was given by two other bridge players and the host at whose house the game was played. The defendant pleaded the Gaming Act, and contended that the claim was in respect of the amount, viz., £12 10s., lost at chemin de fer. The amount lost by him at bridge had been paid in cash. The learned judge, Mr. G. J. Lynskey, K.C., gave judgment for the plaintiffs, with costs. It is to be noted that chemin de fer was held to be a game of chance and unlawful in *Fairthough* v. *Whitmore* (1895), 64 L.J. Ch. 386.

THE REMUNERATION OF ARCHITECTS.

In a recent case at Stourbridge County Court (*Stibbs* v. *Johnson*) the claim was for £20 as money due for professional services. The plaintiff sued as administratrix of her late husband (who died in April, 1936), and her case was that the deceased had prepared plans of two houses to the order of the defendant for construction by a third party. By consent the claim was amended to £16 2s., being 5 per cent. of the total cost of each house. The evidence was that the deceased had retired from active practice as an architect and had taken the licence of a public-house. He continued, however, to prepare plans occasionally and had supervised the erection of the defendant's houses. This was denied by the defendant, who contended that a special bargain was made that the deceased should prepare plans only, and that the cost would be either £5 or an amount based on commission at 2½ per cent. On the latter basis the defendant had paid into court £8 1s. Evidence

was given for the plaintiff that 5 per cent. was the appropriate charge under the scale of the Royal Institute of British Architects, of which the deceased was not a member. His Honour Judge Roope Reeve, K.C., observed that the above scale was appropriate for services far in excess of those rendered by the deceased. There was nothing in the plans to justify the higher charge and the defendant had made out his case that a special bargain was made. Judgment was given for the plaintiff for £8 1s., with costs to the date of payment into court. The defendant was awarded costs subsequent thereto.

In *Stibbs* v. *Rollinson and Another*, at the same court, the claim was for architect's remuneration, for the preparation of plans, against two brothers jointly. They were both sued because each denied liability. The evidence was that one brother had built the house for the other. Judgment for £15 2s. 5d. (being commission at 4 per cent. on the cost) was given against the brother for whom the house was built. It was pointed out that, where an architect did work on a house, he was employed by the owner and not by the builder. As the claim against the builder failed, the costs payable to him by the plaintiff were ordered to be recovered from the brother who was found liable to the plaintiff as building owner.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

The Over-reaching Effect of Conveyances by Trustees for Sale.

Sir,—May I ask if you would deal with the following in an article in The Solicitors' Journal, if thought to be of general interest.

Where persons who hold a legal estate as joint tenants are the persons beneficially entitled, the authorities seem to differ as to the advisability of providing that on a sale of the property the vendors should convey as beneficial owners rather than as trustees. "Prideaux" advocates that they should be required to convey as beneficial owners, "The Encyclopædia of Forms and Precedents" is rather doubtful, while "Emmet" (12th ed., p. 392) points out that a conveyance by the vendors as beneficial owners would *not over-reach* (his italics) the equitable trusts and powers by the Act made to attach to the net proceeds of sale, as it would if made under the statutory trust for sale. Thus "Emmet" seems to suggest that it may be a mistake to require the vendors in such a case to convey as beneficial owners.

To take a practical instance, supposing a joint tenancy had been severed, and one of the interests assigned or incumbered, and the facts were concealed from a purchaser, "Emmet's" proposition seems to be that in such a case the equitable trusts would be shifted to the proceeds of sale if the vendors were expressed to convey "as trustees," in exercise of the trust for sale, but not if they had conveyed as beneficial owners. This would certainly prove inconvenient in practice.

At first sight it seems paradoxical that a conveyance from certain parties "as trustees" should be more effective than a conveyance from the same parties "as beneficial owners."

I hope I have made myself clear.

F. L. Hetley.

Harrington Gardens, S.W.7.
29th March.

[The point raised by our correspondent is discussed in "A Conveyancer's Diary" at p. 291 of this issue.—Ed., *Sol. J.*]

To-day and Yesterday.

Legal Calendar.

10 April.—On the 10th April, 1936, the last Coleridge to have professional chambers in the Temple died, and with him finished a legal tradition going back for more than a century to the year 1819, when John Taylor Coleridge, founder of a great legal line, was called to the Bar at the Middle Temple, setting his foot on the path which was to lead him to the Bench and his posterity after him. The Hon. Stephen Coleridge, with whom the story ended, was the second son of Lord Chief Justice Coleridge, and the brother of Coleridge, J. He was Clerk of Assize of the South Wales Circuit, but outside the law he was a man of taste and versatility in art and letters, living to the full his eighty-one years.

11 April.—On the 11th April, 1746, Mathew Henderson, a youth of nineteen, valet to Captain Dalrymple, was sentenced to death at the Old Bailey for the murder of his mistress. He was a boy of great pride and quick resentment, and though he had been kindly treated during five years of service, he brooded for a week over a sharp rebuke administered to him by the lady when he had trodden on her toe by accident, and, finally, he went to her room one night and hacked her to death in the darkness with about fifty blows from a cleaver, afterwards taking her gold watch and diamond rings. He was hanged in Oxford Street, "very penitent but much shocked at death."

12 April.—When James Greenacre, a forty-five year old cabinet maker, decided to better himself by marriage he paid court to Hannah Brown, a lady who, though she took in washing, said she could at any time command £300. He told her that he had property to some amount, but just before the knot was to have been tied he found she had nothing, and his resentment was not lessened by the fact that he had been lying himself. The upshot was that her limbless trunk was found in a sack in the Edgware Road, near the Pineapple Toll Bar. The police traced him and on the 12th April, 1837, he was sentenced to death.

13 April.—When William Higson was hanged on the 13th April, 1785, for the murder of his nine-year-old son, whom he had grossly ill-treated, it was noted that he "seemed more shocked at the idea of being dissected at Surgeons' Hall than with death itself. The horrid spectacles he had seen there of several murderers from time to time made a deep impression upon his mind and engrossed part of his conversation after his sentence." He died at Newgate.

14 April.—On the 14th April, 1801, Lord Eldon received the Great Seal from George III. He afterwards said: "I was the King's Lord Chancellor, not the Minister's. When I was made Chief Justice of the Common Pleas, the King insisted upon my giving him my promise that whenever he called upon me to fulfil the office of Lord Chancellor I would do so." He also said: "I was very fond of the Court of Common Pleas and would never have quitted it for the Chancellorship, but my promise was given." With one short interval he remained Chancellor till 1827.

15 April.—Chief Baron Thomson died at Bath on the 15th April, 1817, having sat as a judge many years longer than any of his colleagues.

16 April.—On the 16th April, 1760, the unbalanced Earl Ferrers was brought before the House of Lords to be tried for the murder of his steward, whom he had deliberately shot in his room in revenge for some imaginary wrong. The Earl managed his defence, which was one of insanity, with considerable skill, but he was found guilty and hanged. It is related that his mother refused to support the plea of madness saying: "Well, but if I do, how am I to marry off my daughters?"

THE WEEK'S PERSONALITY.

Chief Baron Thomson seems to have been one of those judges who improve as they go along. His career was unusual because at the age of thirty-eight he accepted a Mastership in Chancery and was generally regarded as having laid himself on the shelf. Four years later he became accountant-general of that court and then, in the following year, 1787, he became a Baron of the Exchequer. A rather spiteful, but highly polished contemporary essay published about this time likened him to a stage character " introduced for the sole purpose of filling up the scene between the exit and entrée of more important" characters, hinted that he would not have got his place " without some more powerful recommendation than his own talents," in the shape of " strong claims of nature and sympathy upon illustrious patronage " and denied him " all pretensions to oratory." However, by 1817, after he had been Chief Baron for three years and a judge for thirty, living to be in point of years the Father of the Bench, he had obtained a reputation of the highest order in point of legal knowledge, perspicacity and strict integrity. He also had a sense of humour. His habit of checking witnesses who were speaking too fast earned him the nickname of " The Staymaker " in Westminster Hall.

MOUTHS OPEN AND SHUT.

So in the end Weidmann has been found guilty of his six murders after a seventeen-day trial, during which he has shown an anxiety to confess everything rarely found outside the U.S.S.R. Seventeen years ago, in the same court at Versailles, Maître de Moro-Giafferi, the brilliant leader who defended him, was wrestling amid intense public excitement with the opposite handicap of a client who wouldn't talk. Landru, the mass-murderer of over-confiding women with a little property, would answer nothing to the judge's interrogations save to score sarcastic little points which gave away nothing of the grim secret of the vanishing ladies with whom he had associated. No bodies had been found, and their only epitaphs were cryptic little entries in a black note-book which he kept. When asked about these, he only replied : " Perhaps the police would have preferred to find on page 1 an entry in these words : ' I, the undersigned, confess that I have murdered the ten women whose names are herein set out.' " His readiness to see the trap in any question and his quickness in evading it delighted the fashionable audience in court, but made a bad impression on the jury. On being sentenced he protested his innocence, but gave no clue to his mystery. His secret died with him.

ELOQUENT NO-MORE.

Those who study the form of those speeches from the dock of which the Irish from Robert Emmett to Roger Casement have proved themselves such masters will have grave doubts whether the current collection of bomb layers really come out of the same box as the predecessors they claim. The standard of the I.R.A. knows few variations on " God Save Ireland " and lies far below the average Fenian level. It is an interesting historical parallel that the great Fenian alarm in England took place soon after the American Civil War. Indeed, Kelly and Deasy, the two men whose rescue from the Manchester prison van cost the life of a police officer, had fought in the Federal ranks. The Fenians condemned for the exploit spoke in court with dignity rising to eloquence. The words of one of them still live translated into a song yet sung : " What is decreed a man in the page of life he has to fulfil it either on the gallows or drowning or a fair death in bed or on the battlefield. So I look to the mercy of God." But Michael Barrett who died for blowing up the wall of Clerkenwell Gaol causing several deaths eclipsed them all. The fair ladies of Mayfair and Belgravia flocked to the Old Bailey to gaze on his handsome face and manly bearing and during his last speech full of resignation to the will of God and devotion to Ireland, not only they but the very barristers wept. The judges themselves were visibly moved.

Notes of Cases.

Judicial Committee of the Privy Council.

Vita Food Products, Inc. *v.* Unus Shipping Company in Liquidation.

Lord Atkin, Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Porter.
30th January, 1939.

SHIPPING—BILL OF LADING—OMISSION TO INCORPORATE CARRIAGE RULES IN ACCORDANCE WITH NEWFOUNDLAND ACT—PROVISION DIRECTORY AND NOT IMPERATIVE—EFFECT OUTSIDE NEWFOUNDLAND IF BILL OF LADING ILLEGAL BY NEWFOUNDLAND LAW.

Appeal from a decision of the Supreme Court of Nova Scotia, *en banc*.

The appellants, Vita Food Products Inc., were owners of a cargo of herrings shipped in a vessel belonging to the respondents. The herrings were loaded at a Newfoundland port for carriage to New York. By error the bills of lading covering the cargo were old ones which did not incorporate the Hague rules which had been adopted by the Carriage of Goods by Sea Act, 1932, of Newfoundland. The herrings arrived at New York in a damaged condition in respect of which the appellants made the present claim. It was admitted that the loss was occasioned by the captain's negligence in navigation. Clause 7 of the bills contained a general exemption in respect of the goods carried from liability for all damage capable of being covered by insurance, and from liability above a certain value per package unless a special declaration were made. The same clause also provided that : " This contract shall be governed by English law." By s. 1 of the Newfoundland Act of 1932, " Subject to the provisions of this Act, the rules shall have effect in relation to . . . the carriage of goods by sea in ships carrying goods from any port in this Dominion to any other port whether in or outside this Dominion." By s. 3, " Every bill of lading . . . issued in this Dominion which contains . . . any contract to which the rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules . . ."

LORD WRIGHT, delivering the judgment of the Board, said that the rules conferred rights and immunities and also imposed liabilities upon the shipowner—liabilities which he could not escape since Art. III (8) avoided any agreement relieving the carrier from the liability for negligence imposed by the rules or lessening that liability. But the Act and rules only applied where a bill of lading was issued, and there was no provision making it imperative for the carrier to issue a bill of lading save on demand of the shipper. The rules and the provisions of the bills of lading in suit agreed in substance in respect of the relevant matters, viz., liability in respect of negligence and unseaworthiness. In some respects the rules went beyond the bills of lading. In other respects the bills of lading contained provisions which were outside the scope of the Act and rules. Moreover they expressly stipulated that the proper law of the contract was to be English law. The central questions were whether the failure to obey s. 3 of the Act was illegal under the law of Newfoundland, the place where the contract was made, and whether that failure rendered the contract void in the Courts of Nova Scotia, and in either event what was the resultant legal position. The Supreme Court in substance held that disobedience to s. 3 constituted an illegality in which both parties were equally concerned, and that accordingly the action failed whether laid in contract or in tort. In their lordships' opinion the bills of lading were not illegal, and must be accepted as valid documents by the Courts of Nova Scotia. The first question to determine was the true construction of ss. 1 and 3 of the Act. In their opinion, the words " subject to the provisions of this Act " merely meant in this connection that the rules were to apply but subject to the modifications contained in ss. 2, 4, 5 and 6 (3) of the Act. Section 1 was the dominant

section: s. 3 merely required the bill of lading to contain an express statement of the effect of s. 1. That view raised the question whether the mandatory provision of s. 3 which could not change the effect of s. 1 was, under Newfoundland law, directory or imperative, and, if it were imperative, whether a failure to comply with it rendered the contract void, either in Newfoundland, or in courts outside that Dominion. In their lordships' opinion the express words of the bill of lading must receive effect, with the result that the contract was governed by English law. It was now well settled that by English law (and the law of Nova Scotia is the same) the proper law of the contract was "the law which the parties intended to apply." It might be said that the transaction which was one relating to the carriage on a Nova Scotian ship of goods from Newfoundland to New York between residents in these countries contained nothing to connect it in any way with English law, and that therefore that choice could not be seriously taken. Their lordships rejected that argument both on grounds of principle and on the facts. Connection with English law was not as a matter of principle essential. There was no ground for refusing to give effect to the express selection of English law as the proper law in the bills of lading. His lordship having contrasted *The Montana*, 129 U.S. 397 and *Re Missouri Steamship Co.* 42 Ch. D. 321, said that cases could be cited where the contract was not avoided by some particular illegality, e.g., *Kearney* v. *Whitehaven Colliery Co.* [1893] 1 Q.B. 700. Each case had to be considered on its merits. In their lordships' opinion there were not grounds for holding that the Newfoundland law did in Newfoundland nullify bills of lading such as those in question. The inconveniences that would follow from holding bills of lading illegal in such cases as that in question were very serious. A foreign merchant or banker could not be assumed to know or to enquire what the Newfoundland law was, at any rate when the Bill of lading was not expressed to be governed by Newfoundland law, and still less when it provided that it was governed by English law; and it would seriously impair business dealings with bills of lading if they could not be taken at their face value, and as expressing all the relevant conditions of the contract. A bill of lading fulfilled other functions than merely that of setting out the conditions of carriage. It was a document of title. All those reasons seemed to justify the conclusion that the omission of what was called the clause paramount did not make the bills of lading illegal documents, in whole or in part, either within Newfoundland or outside it. Section 3 was directory not obligatory. But on the basis that the bills of lading were illegal in Newfoundland, it was argued that no court in any country would enforce their terms and exemptions, and that the carriage would therefore be upon the terms implied where goods were taken for carriage by a common carrier, i.e., subject only to the exception of the Act of God and the King's Enemies. But whatever view a Newfoundland court might take, the result would be the same in the present case, where the action was brought not in a Newfoundland, but in a Nova Scotian court. If it had before it a contract good by its own law or by the proper law of the contract, it would in proper cases give effect to the contract and ignore the foreign law, as was done in the *Missouri Case*, *supra*. The same attitude was illustrated in *Dobell* v. *Steamship Rossmore Co.* [1895] 2 Q.B. 408. Foreign law was also disregarded in *Trinidad Shipping Co.* v. *G. R. Alston & Co.* [1920] A.C. 888. Lord Wright, having, on this aspect of the case, considered *The Torni* [1932] P. 78, said that their lordships did not think that they should follow or apply the reasoning in that case. The appeal must be dismissed.

COUNSEL: *G. McL. Daley*, K.C., and *W. L. McNair*; for the appellant; *C. B. Smith*, K.C., and *C. T. Miller*, for the respondents.

SOLICITORS: *Ince, Roscoe, Wilson & Glover*; *Botterell and Roche.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Griffiths *v.* Smith.

Greene, M.R., MacKinnon and Finlay, L.JJ.
6th, 7th and 8th March, 1939.

EDUCATION — NON-PROVIDED ELEMENTARY SCHOOL — EXHIBITION OF CHILDREN'S CRAFTS, DRAWINGS AND WORK—INVITATION OF HEAD TEACHER TO PARENTS AND CHILDREN—APPROVAL OF MANAGERS—FLOOR UNSAFE—NEGLIGENCE—INJURY TO PARENT—LIMITATION—PUBLIC AUTHORITIES PROTECTION ACT, 1893 (56 & 57 Vict., c. 61), s. 1.

Appeal from Tucker, J.

In 1837, St. Clement's School, Liverpool, was constituted by a trust deed creating an educational trust which governed it. The property was thereby vested in trustees, but the administration of the trust was to be directed by a committee of the Liverpool Church of England Schools Society. Under the trust deed managers were also appointed. On the 12th December, 1934, the head teacher, with the authority and approval of the managers, held an exhibition out of school hours of the work done by the children, examples of crafts, drawing and handiwork being shown and songs being sung. Parents of children at the school were invited. During the entertainment a floor collapsed and the plaintiff, one of the parents, was injured. In an action by her for damages, the managers, two members of the committee and the trustees were joined as defendants. No claim was made against the trustees. Tucker, J., held that the floor was unsafe owing to negligence and that the plaintiff was an invitee. He also held that the managers had a material interest in the invitation, inasmuch as it was in the interests of the school to enlist the support and co-operation of the parents in the work done, and that on the occasion in question the school was being used as a public elementary school. Accordingly, he held that the managers came within the Public Authorities Protection Act, 1893, s. 1, the action not having been brought within the time thereby limited. He further held that the committee were not liable as not being in occupation of the premises.

GREENE, M.R., dismissing the plaintiff's appeal, said that he agreed with the finding that the school was being used on this occasion as a public elementary school. As to the function the managers were performing in providing the building, that point was covered by *Greenwood* v. *Atherton*, 55 T.L.R. 222; 82 SOL. J. 1049. These managers were providing the building because they were managers of a public elementary school under the Education Act, 1921, and earning for it the right to assistance from the public authority under s. 29. But the further question arose: What were they doing when they sanctioned the head teacher issuing these invitations? It has been argued that the invitations had not been issued in pursuance of any duty or in execution or intended execution of any statute, but were purely voluntary, and that the 1893 Act only applied to acts with regard to the doing of which a duty was imposed. Such a gathering was very familiar in all sorts of schools, and in respect of it the managers were performing their functions as managers in the conduct of a public elementary school. One need not be able to indicate some specific duty in the Education Act. Statutes did not usually deal with details. Here a public elementary school was being carried on in execution of the Act. *Bradford Corporation* v. *Myers* [1916] 1 A.C. 242, was a different case. The supply of coke there lay quite outside the corporation's gas undertaking. Here the issuing of the invitations was a reasonable and proper incident in carrying on the school. The 1893 Act protected the managers. As to the committee, but for the Education Acts the managers would probably have been acting as their agents. But those Acts entirely changed the position of the old governing body of an educational trust concerned with a

public elementary school. Most of its powers of management were taken away and vested in a new body set up by the Acts. Those powers were now divided between the local education authority and the managers, and any pre-existing managing body under the trust was to that extent displaced. The committee could not have interfered with the discretion of the managers in issuing the invitations. In issuing them the managers were not binding the committee as their principals. The same applied to the maintenance of the buildings. It was not necessary to investigate whether, if the committee had been liable, the 1893 Act would have protected them.

MacKinnon and Finlay, L.JJ., agreed.

COUNSEL: *Sir William Jowitt*, K.C., *Clothier*, K.C., and *Turner-Samuels*; *Nield*; *Miller*, K.C., and *J. S. Lloyd*.

SOLICITORS: *Silverman & Livermore*, of Liverpool; *Gamon, Arden & Co.*, of Liverpool; *Buckley Pidgeon & Co.*, of Liverpool.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Uxbridge Permanent Benefit Building Society *v.* Pickard.

Greene, M.R., MacKinnon and Finlay, L.JJ.
16th March, 1939.

SOLICITOR — FRAUD BY MANAGING CLERK — TRANSACTION *primâ facie* WITHIN SCOPE OF CLERK'S AUTHORITY—FRAUD BASED ON FORGERY NOT COMMITTED BY HIM—FRAUD NOT COMMITTED ON CLIENT—SOLICITOR'S LIABILITY.

Appeal from Atkinson, J. (82 SOL. J. 1010).

A solicitor practising in London had a branch office in charge of one, Conway, a managing clerk, at Slough, where one, Daly, a client of his at the branch office, owned a house. Between 1933 and 1936, he acted through Conway as Daly's solicitor in various matters affecting it. In 1936, Conway applied to the building society for a loan on behalf of one, Cox, whom he represented to be a client of the solicitor intending to buy the house which was in fact Daly's from one, Littlestone (a fictitious person), who was said to have acquired it in 1906 from one, Keyedon (another fictitious person). Conway, having produced deeds purporting to show this devolution of title, the society advanced Cox £500 on the security of the house. The society now sued the solicitor (who was entirely innocent and against whom no personal allegation was made) to recover this sum (less £20 7s. 6d. repaid to them) as money had and received to their use or as damages for fraud. Atkinson, J., having found as a fact that Conway was a party to Cox's fraud, though he did not forge the deeds, gave judgment for the plaintiffs.

GREENE, M.R., dismissing the defendant's appeal, said that it had been attempted to distinguish such a case as this, where the person defrauded was not a client of the firm, from such a case as *Lloyd* v. *Grace Smith & Co.* [1912] A.C. 716, where the person defrauded was a client, but the full authority of the managing clerk to conduct the business of a solicitor's office on behalf of his principal covered not merely acting for clients, but carrying through all transactions normally carried through by a solicitor, i.e., completion of conveyancing business with third parties having dealings with clients and obtaining from such third parties, upon completion of the transaction, sums of money and giving receipts therefor. The principle in *Lloyd* v. *Grace Smith & Co.*, *supra*, must extend to cases where the authority which the clerk purported to exercise and which, on the face of it, he had got involved leading third parties to change their position on the faith that the business which brought them into contact with the firm was genuine. That was the present case. It was within the clerk's ostensible authority to perform acts of the class mentioned. So long as he was acting within the scope of that class of act, his employer was bound, whether the clerk was acting for his own purposes or his employer's. It had been sought to draw a comparison between this case and that of a servant who was engaged on a frolic of his own. But the case of a driver taking a motor car off on a frolic of his own was totally different, as there was no question of the action of third parties being affected by his apparent authority. *British Mutual Banking Co.* v. *Charnwood Forest Railway Co.* 18 Q.B.D. 717, had been relied on, but the argument could not be supported. It had been further said that in any event the documents whereby the fraud was perpetrated were forgeries, but *Ruben* v. *Great Fingall Consolidated* [1906] A.C. 439, and *Kreditbank Cassel* v. *Schenkers* [1927] 1 K.B. 826, afforded no justification for suggesting that a forgery, if in other respects it came within the scope of ostensible authority, prevented the doctrine from applying. There was no justification for applying the analogy of *Royal British Bank* v. *Turquand*, 25 L.J.Q.B. 317, to the ordinary cases of principal and agent.

MACKINNON and FINLAY, L.JJ., agreed.

COUNSEL: *J. Morris*, K.C., and *Collingwood*; *Stenham* and *F. Whitworth*.

SOLICITORS: *Hempsons*; *Woodbridge & Sons*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Claydon *v.* Sir Lindsay Parkinson & Co. Ltd.

Scott, Clauson and du Parcq, L.JJ.
7th March, 1939.

FACTORY AND WORKSHOP — BUILDING — SCAFFOLDING — ERECTION BY HEAD CONTRACTOR—INJURY TO WORKMAN EMPLOYED BY SUB-CONTRACTOR—LIABILITY—BUILDING REGULATIONS, 1926 (S.R. & O., 1926, No. 738), r. 1.

Appeal from Westminster County Court.

The head contractors in certain building operations erected scaffolding on the premises. They entered into a sub-contract for part of the work with a second firm, who entered into a sub-contract for a portion of that part with a third firm. A deal plank in the scaffolding eighteen feet from the ground broke while a workman employed by the third firm was walking on it, and he fell, sustaining injury. In an action by him against the head contractors evidence was given to explain the accident. His Honour Judge Dumas said that he could only find for the plaintiff on common law grounds if he was satisfied that the plank when left in position was unfit to be so left. He held that the plaintiff had not made out his case on the ground of negligence. He also held that the case failed on the ground of breach of statutory duty.

CLAUSON, L.J., delivering the court's judgment, dismissing the plaintiff's appeal, said that at common law he was no doubt the head contractor's invitee. His lordship referred to *The Kite* [1933] P., at p. 169, and *Ballard* v. *North British Railway Co.* [1933] S.C., at p. 54, and said there was no error of law entitling the court to interfere on that branch of the case. It was unnecessary to consider whether in the absence of any explanation what had happened would have amounted to *primâ facie* evidence of negligence. As to the statutory duty, it was said (the court would assume correctly) that the Building Regulations, 1926, applied to the premises. The duty in respect of scaffolding laid on the employer by reg. 1 was a duty to his own workmen (see also regs. 4 and 13). Whether the man had a case under the Regulations against his own employer was a matter with which the court was not here concerned.

COUNSEL: *Pritt*, K.C., and *R. M. Hughes*; *J. Pugh*.

SOLICITORS: *W. H. Thompson*; *Carpenters*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Wallington *v.* Townsend.

Morton, J. 8th February, 1939.

VENDOR AND PURCHASER—SALE OF LAND—CONTRACT—MISTAKE IN PLAN—VENDOR'S REFUSAL TO COMPLETE—EFFECT OF PARTIES NOT BEING *ad idem*.

In 1922 the defendant bought the land on which stood a bungalow called "Seaspray East." In 1929 she bought adjoining land on which stood a bungalow called "Seaspray West." She carried out certain works converting the two buildings into one, but later divided them again. In 1937 she entered into a contract with the plaintiff for the sale of a piece of land described in general terms "together with the bungalow called Seaspray East and the garage now standing thereon . . . as the same is more particularly delineated on the plan annexed hereto and thereon coloured pink." The plan was a copy of that which was annexed to the deed conveying the "Seaspray East" land to the defendant and showed the boundary running in a straight line between that land and the "Seaspray West" land in the same place. The defendant's legal advisers in drafting the contract did not know that owing to the structural alterations the bathroom of "Seaspray West" stood on the land coloured pink. The defendant signed the contract without reading it or examining the plan, but when she discovered the mistake refused to complete the contract. The plaintiff claimed repayment of her deposit and damages. The defendant counter-claimed for a declaration that the strip along the boundary on part of which the bathroom stood was not included in the contract. Alternatively, she claimed rectification.

MORTON, J., said that the words "as the same is more precisely delineated on the plan annexed hereto and thereon coloured pink" were the first clear and definite description of the land sold. The only definite description was in the plan. On the true construction of the contract the disputed strip went to the plaintiff. The defendant did not intend to sell it and it was a mistake that it was included. On the other hand the p'aintiff intended to buy part, but not the whole, of the strip. As the parties were not *ad idem* there could not be rectification. When failure to complete was not due to defect in the vendor's title damages could be given for loss of the bargain. But if the purchaser got damages he could not get his conveyancing costs too (*In re Daniell* [1917] 2 Ch. 405). This plaintiff had suffered no damage by loss of the bargain, but the damages were at large and the court might give what it thought right. The plaintiff should recover her deposit and get as damages 4 per cent. interest on it for the loss of its use, £4 0s. 6d. for the cost of approving and executing the contract and £12 2s. 7d. for the cost of investigating the title, preparing the conveyance and searches. The defendant should pay the costs of the action and of the counter-claim, which was dismissed.

COUNSEL: *Cohen*, K.C., and *Craufurd*; *Winterbotham*.

SOLICITORS: *Guy Wallington*, for *J. C. Buckwell and Wallington*, of Brighton; *Waterhouse & Co.*, for *Coleman & Co.*, of Hove.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Cowlishaw; Cowlishaw *v.* Cowlishaw.

Bennett, J. 16th February, 1939.

WILL—BEQUEST OF ANNUITY—"FREE OF ALL DUTIES"—"FREE OF ALL DEDUCTIONS WHATSOEVER"—WHETHER FREE OF INCOME TAX.

A testator who died in 1937 bequeathed to his wife "free of all duties" a life annuity of £900 "to be paid free of all deductions whatsoever by equal quarterly payments, the first whereof shall be made three months after my death." The question arose whether this was payable free of income tax.

BENNETT, J., said that a mere gift of a clear annuity or one clear of all deductions was not enough to discharge the annuitant of liability to pay tax on his own income. The question was one of construction on the particular document. If on the face of it there appeared an intention that income tax should be included in "deductions," it should be construed accordingly: *In re Shrewsbury Estate Acts* [1924] 1 Ch., at pp. 336, 337. Here the bequest was of an annuity payable free of income tax.

COUNSEL: *Droop*; *Irby*.

SOLICITORS: *Doyle, Devonshire & Co.*, for *Abberley and Rawstorn*, of Burslem; *Gregory, Rowcliffe & Co.*, for *Cowlishaw and Son*, of Uttoxeter.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Superma Ltd. and Sartory *v.* Tenconi.

Morton, J. 14th March, 1939.

PATENTS AND DESIGNS—ACTION TO RESTRAIN INFRINGEMENT—DEFENCE STRUCK OUT—WHETHER VALIDITY OF PATENT CAME IN QUESTION—WHETHER ACTION HAD PROCEEDED TO TRIAL—PATENTS AND DESIGNS ACT, 1907 (7 Edw. 7. c. 29), s. 35—PATENTS AND DESIGNS ACT, 1919 (9 & 10 Geo. 5. c. 80), s. 20—R.S.C., ORD. XXXI, r. 21, ORD. LIIIA, r. 20.

The plaintiffs sought an injunction to restrain alleged infringement of a patent. The defendant having failed to comply with an order to deliver an affidavit of documents, the defence and counter-claim were struck out under R.S.C., Ord. XXXI, r. 21, which placed him in the same position as if he had not defended. At the hearing the plaintiffs asked for a certificate that the validity of the patent came in question under the Patents and Designs Act, 1907, s. 35, amended by the Patents and Designs Act, 1919, s. 20. They tendered evidence to establish its validity.

MORTON, J., said that if when an action came on, the statement of claim alleged validity and the defence denied it, it might be said that the validity had come in question, though it was not attacked at the hearing, and though the defendant either failed to appear or said that he could not contest the validity. But here, when the matter came to court, there was a statement of claim with undisputed allegations and there was no defence. As the case was not within s. 35, the certificate could not be granted. His lordship having granted an injunction, ordered an inquiry as to damages and delivery up of articles constructed in infringement of the patent and given the plaintiffs the costs of the action, reserving the costs of the inquiry and ordering the costs of the counter-claim to be taxed, further held that the action had not proceeded to trial within Ord. LIIIA, r. 20, and that the costs of the issues raised by the particulars of breaches were in the taxing master's discretion: *Babcock & Wilcox, Ltd.* v. *Water Tube Boiler & Engineering Co.*, 27 R.P.C. 626.

COUNSEL: *Tookey*.

SOLICITORS: *Berrymans*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Ripon (Highfield) Housing Order, 1938; *Re* White and Another.

Charles J. 8th February, 1939.

HOUSING—ACQUISITION OF LAND FOR HOUSING WORKING CLASSES—COMPULSORY PURCHASE ORDER IN RESPECT OF PART OF PADDOCK AND PARK LAND ATTACHED TO RESIDENCE—CLAIM FOR EXEMPTION—ALL RELEVANT MATTERS CONSIDERED BY MINISTER—COURT NOT ENTITLED TO REHEAR MATTER—HOUSING ACT 1936 (26 Geo. V and 1 Edw. VIII, c. 51), ss. 73, 74, 75.

Appeal under the Housing Act, 1936.

On the 3rd January, 1938, Ripon Corporation made an order under Pt. V of the Housing Act, 1936, for the compulsory purchase of some 23 acres of land near a house called "Highfield," which order was confirmed by the Minister of Health in respect of a reduced area of the land. Application was now made to the High Court to quash the order on the ground that the land in question was part of a park and accordingly exempted from compulsory purchase by s. 75 of the Act. It was stated in an affidavit, *inter alia*, that the estate comprised some 35½ acres, including 27 acres of paddock

land; that the house was an imposing one of stone and of a size and type to which paddock and parkland were to be expected to be attached; and that an open expanse of parkland was an essential in addition to the formal garden.

CHARLES J., said that the corporation had acted in accordance with ss. 73 and 74 of the Act. Section 73 gave a local authority power, *inter alia*, to acquire land as a site for the erection of houses for the working classes. Section 74 (1) authorised the acquisition of the land for that purpose by means of a compulsory purchase order " made and submitted to the Minister and confirmed by him . . . " The powers of the court in dealing with an appeal of this nature were to be found in para. 2 (2) of Sched. II to the Act, which empowered the court to quash the order if satisfied that it was " not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by any requirement of this Act not having been complied with." The right given to a local authority to make the compulsory purchase order was in his (his lordship's) opinion quite undoubted, and was not altered in any way by s. 75. The method prescribed by the Act was that the Minister should appoint an inspector (which had been done here), who was to hold an enquiry and hear all parties interested, and that it should be within the power of the inspector—he (his lordship) thought, one of his duties—himself to inspect the land in question. The inspector then, having heard the evidence and the submissions made to him, must report to the Minister the result of the enquiry, and the Minister must decide whether or not the land was a park within the exemption conferred by s. 75. The affidavit of the Director and Principal Assistant Secretary of the Housing and Town Planning Division of the Ministry of Health stated plainly that the locality, the evidence given, and the representations made were all duly considered, and that a conclusion of fact was arrived at. He (his lordship) agreed with the observations of du Parcq, J., in *Re Newhill Compulsory Purchase Order*, 1937 (*Appeal of Payne*), 82 SOL. J. 375; 102 J.P. 273, which was almost exactly in point. Whatever conclusion he (Charles, J.) might have formed on the evidence, he refused to rehear the case, and he had no power to do so. It was true that *Re Bowman, South Shields* (*Thames Street*) *Clearance Order*, 1931, [1932] 2 K.B. 621; 76 SOL. J. 273, applied to a part of the relevant Act not subject to the qualification contained in s. 75 of the Act of 1936, but the principle there enunciated was none the less the good one that, where there was evidence on which the Minister could arrive at the conclusion at which he arrived, it was not for the court to rehear the case. It would be desirable for the owners of the house to retain surrounding land, although in this case the space found not to be a park was almost at the back of the house, and not in front as in the *Newhill Hall Case*, *supra*; and the back part of the house was screened by trees. All the relevant matters had been considered, as shown by the fact that a considerable portion of the land in the order was excluded by the Minister and restored to the Highfield Estate. The appeal must be dismissed.

COUNSEL: *W. E. P. Done*, for the appellants; *Valentine Holmes*, for the respondent.

SOLICITORS: *Clarke, Rawlins & Co.*, for *J. H. & H. F. Rennoldson*, South Shields; *The Solicitor, the Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Hamilton.

Charles, Atkinson and Singleton, JJ.
23rd January, 1939.

CRIMINAL LAW—EVIDENCE—CHARGE OF OBTAINING GOODS BY MEANS OF CHEQUE KNOWINGLY DRAWN ON INSUFFICIENT FUNDS—DEFENCE NO KNOWLEDGE OF INSUFFICIENCY—CROSS-EXAMINATION AS TO OTHER SIMILAR OFFENCES—QUESTION ABOUT ALLEGED OBTAINING OF OVERDRAFT BY FALSE REPRESENTATIONS — WHETHER ADMISSIBLE — CRIMINAL EVIDENCE ACT, 1898 (61 & 62 Vict., c. 36), s. 1 (*f*).

The appellant, Hamilton, was convicted at Essex quarter sessions in November, 1938, on three counts of an indictment which charged him with obtaining goods by false pretences, all being in relation to cheques which he passed in return for goods which he obtained. It was alleged that the goods were obtained by false pretences because he must have known, when he drew the cheques, that there was no money in his bank to meet them. After conviction, he admitted twenty-six cases of fraud, and asked that they should be taken into consideration, and he was sentenced to three years' penal servitude. The appellant's defence being that he thought that there was, or might have been, money in the account to meet the cheques, it was not disputed that the prosecution were entitled to cross-examine him as to other offences of a similar nature. In the course of the cross-examination, the appellant mentioned that he was " wanted on a warrant from last March." The prosecution then asked: " The warrant from last March was in connection with a sum of £200 which you had obtained . . . by fraud ? " The appellant now objected to that question.

SINGLETON, J., delivering the judgment of the court, said that while the cross-examination in question could be administered in such a case, regard must always be had to the strict terms of the Criminal Evidence Act, 1898, s. 1 (*f*), which protected an accused person from questions relating to offences other than that charged " unless (i) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged." In the view of the court, the question objected to should not have been put. In one sense it was put accidentally, because the prisoner himself had brought the matter out, and counsel proceeded to ask a question which, the court thought, he would not have asked had he not been taken by surprise. The question about the £200 said to have been obtained by fraud related to the alleged obtaining by the appellant of an overdraft by certain false representations. That was not a similar offence. That was not a question which could properly be put to rebut the defence put up by the accused. It was not evidence of an offence which could be used in relation to s. 1 (*f*) of the Act of 1898. When, however, the case was regarded as a whole, the court felt that neither the question nor the accused's answer could have much bearing on the result of the case. The court thought it right, in the circumstances of the case, that the appeal should be dismissed notwithstanding that the point raised in the notice of appeal might be made in the appellant's favour, because no substantial miscarriage of justice had prevailed.

COUNSEL: *J. C. Llewellyn*, for the appellant; *Percy Lamb*, for the Crown.

SOLICITORS: *The Registrar of the Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Galene *v.* Galene (otherwise Galine).

Henn Collins, J. 3rd March, 1939.

NULLITY—JURISDICTION—MARRIAGE OF FRENCH NATIONALS IN ENGLAND—FRENCH DOMICIL—MARRIAGE INVALID BY FRENCH LAW—NULLITY PRONOUNCED BY FRENCH COURT—SUBSEQUENT PETITION FOR DECLARATION IN ENGLAND—DECREE.

This was an undefended petition by M. Charles Paul Galene for nullity. The petitioner, a French citizen at all material times domiciled in France, went through a ceremony of marriage with the respondent at the Register Office, Paddington, on 22nd December, 1921. He was residing in

England at the time and was then aged twenty-one years, and the respondent was aged twenty-three years. In 1922, the petitioner returned to France. Whereupon the petitioner's father instituted proceedings for nullity of marriage in respect of the English marriage on the ground of informality in French law. On 8th June, 1923, the Civil Tribunal of First Instance at Bordeaux declared that the ceremony of marriage in England was invalid by reason of, *inter alia*, (i) non-publication of banns (contravening art. 63 of the Civil Code), (ii) non-consent of the petitioner's father, and (iii) failure to record the marriage in the register of civil status in France (contravening art. 171 of the Civil Code). The French proceedings were undefended, and there was no appeal. Material paragraphs of the present petition were the following: "3. Your petitioner . . . is a French citizen and is and was at the time of the form of marriage domiciled in France. 5. That on June 8, 1923, the Civil Tribunal of First Instance of Bordeaux in the Republic of France being the court in that behalf declared that the form of marriage between your petitioner and the respondent in London on Dec. 22, 1921, was null and void by the laws of France as being clandestine and in fraudulent evasion of the laws of France." The prayer to the petition asked that the court should decree: "That the form of marriage of Dec. 22, 1921, was and is null and void." Evidence was given by the petitioner, who produced a certified copy of the order of the French court, also a certificate that there had been no appeal therefrom. An expert witness dealt in evidence with the French law, and the grounds expressed in the order of the French court. The question arose as to whether the English court had jurisdiction to pronounce a decree, the marriage having been annulled by a competent court in France. Counsel on behalf of the petitioner submitted that the present case was on all fours with the decision of Lord Merrivale, P., in *De Massa* (*otherwise Horveno*) v. *De Massa, The Times*, 31st March, 1931. That case had been cited with approval in the text-books and legal journals. It carried into effect the general principle laid down in *Salvesen* (*or von Lorang*) v. *Austrian Property Administrator* [1927] A.C. 641—namely, that a judgment of the competent court of the domicil was a judgment *in rem*, which must be recognised and enforced by the English court, unless it had been obtained by fraud, collusion, or other unlawful means.

HENN COLLINS, J., pronounced a decree *nisi* of nullity.

COUNSEL: *Julian Fuller*, for the petitioner.

SOLICITORS: *Barry O'Brien & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Jordan *v.* Jordan.

Sir Boyd Merriman, P.

10th, 16th and 17th February, and 13th March, 1939.

DIVORCE—DESERTION—HUSBAND'S PETITION—EARLIER PROCEEDINGS BY HUSBAND DISMISSED IN 1934—NO RESUMPTION OF COHABITATION—DESERTION SUSPENDED ONLY DURING PROSECUTION OF EARLIER PROCEEDINGS—DECREE *Nisi*—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 176 (*b*), AS AMENDED BY MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 and 1 Geo. 6, c. 57), s. 2—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 and 1 Geo. 6, c. 57), s. 2.

This was a husband's undefended petition for divorce on the ground of desertion for a period of three years immediately preceding the presentation of the petition. In October, 1932, the wife deserted the husband. From June, 1933, to October, 1934, there were unsuccessful proceedings on the file brought by the husband on the ground of the wife's alleged adultery, which were dismissed after a hearing in court. Cross-charges of adultery made by the wife were also dismissed. Thereafter there was no resumption of cohabitation or approaches made to that end. The present proceedings were begun in January, 1938. The question arose whether, assuming desertion in October, 1932, such desertion could be deemed in law to have revived on the dismissal of the earlier proceedings. On 18th July, 1938, the President adjourned the case for argument by the King's Proctor. The question might be formulated as being whether the original desertion was entirely terminated by the presentation of the earlier petition, or, at any rate, by its effective prosecution (see *Gibbs-Smith* v. *Gibbs-Smith*, 83 SOL. J. 260), so that it was a condition precedent to establishing a subsequent charge of desertion that cohabitation had been resumed and that a new offence of desertion had been committed, or whether the true position was that during the prosecution of such proceedings the petitioner was precluded from asserting that a period of desertion continued to run, but that the original offence of desertion, though suspended, was not wiped out, and could be revived after the earlier proceedings had been disposed of. Referring to *Bush* v. *Bush* (83 SOL. J. 16), his lordship continued he wished to say that it must not be thought that in that case he was encouraging the idea that the statutory period of three years immediately preceding the presentation of a petition could be obtained by ignoring the period during which previous proceedings were pending and by aggregating periods before and after that period. He had been pressed with a decision to this effect in *Johnson* v. *Johnson* (82 SOL. J. 698), in which Hodson, J., distinguished *Stevenson* v. *Stevenson* [1911], P. 191, upon a construction of the Matrimonial Causes Act, 1937, s. 6, to which he, his lordship, was not prepared to assent. He was convinced, however, by the argument in the present case, though it was unnecessary to the decision, that the words "has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition" could not be satisfied by aggregating with a period of less than three years immediately preceding the petition an earlier, but detached, period, of whatever duration. Furthermore, he understood that in *Cohen* v. *Cohen* (83 SOL. J. 241), Hodson, J., had recently given a decision to that effect. Assuming that the husband was precluded, as a matter of law, from asserting that the wife's desertion continued to run while he was prosecuting his former petition, could he nevertheless allege that, though the offence of desertion was not absolutely wiped out when he filed his petition in March, 1933, the wife's abstention from cohabitation could, to quote words used by Warrington, L.J., in *Thomas* v. *Thomas* [1924] P. 194, 201, at p. 201, "continue to have the quality of desertion" when the period of suspension came to an end on the dismissal of the suit? The difficulty in the way of that contention lay in the well-known passage in the opinion of Lord Penzance in *Fitzgerald* v. *Fitzgerald* (1869), L.R. 1 P. & M. 694, at p. 698, which, taken literally, appeared to lay down that, even if cohabitation originally ceased, as in this case, by the wrongful act of the wife, the husband, by taking what proved to be abortive proceedings, effectually prevented his wife from resuming cohabitation, whereupon it became impossible for him to allege desertion without a previous resumption of cohabitation. But it had often been explained that that judgment was not intended to be, and could not be taken as, an exhaustive exposition of the law relating to desertion. Moreover, reference to the report in 43 L.J. P. & M., at p. 13, showed that after the dismissal of her suit the wife, in July, 1870, made a formal demand through her solicitor for the resumption of cohabitation, which was disregarded, and two years thereafter she presented a further petition on the ground of adultery and desertion and obtained a decree. His lordship then referred to *Kay* v. *Kay* [1904] P. 382; *Knapp* v. *Knapp* (1880), 6 P.D. 10; *Stevenson* v. *Stevenson* [1911] P. 191, and *Jones* v. *Newtown and Llanidloes Guardians* [1920] 3 K.B. 381, at pp. 384, 385, and continued if it was established that the deserter's attitude of mind was unchanged throughout, he, his lordship, saw no reason why the existence

of the other spouse's obligation to resume cohabitation, if the deserter should happen to change his mind and repent, was sufficient, of itself, to negative desertion after a suit has been disposed of, any more than it would have been before its inception. Though it was not directly in point, the decision in *Boulton* v. *Boulton* [1922] P. 229, supported the view which he had formed. It was held in that case that a period of desertion could begin to run again when, upon notice to the husband, the justices cancelled an earlier non-cohabitation order, based on a finding of desertion, and informed him that he was then at liberty to return to his wife, although no resumption of cohabitation followed. But there was not any presumption that the desertion survived the termination of the suit. The Solicitor-General had referred him to the passage in *Bowron* v. *Bowron* [1925] P. 187, where Scrutton. L.J., said, at p. 195, " . . . the intention to desert is presumed to continue unless the husband proves genuine repentance and sincere and reasonable attempts to get his wife back." That phrase, as the preceding sentence showed, was used in relation to a case of constructive desertion where there had been original cruelty on the part of the husband and an expressed intention to force his wife to leave. However, though the same presumption had been invoked where the deserting spouse merely remained absent from the matrimonial home without excuse in *Sifton* v. *Sifton* (83 SOL. J. 97), he did not think that it could be relied on in a case where the petitioner was precluded by his own act from asserting that the desertion continued without interruption. On the other hand, he did not think that it could be laid down, as a matter of law, that it was a condition precedent to the revival or continuance of the original desertion, after the earlier proceedings were disposed of, that some active steps must have been taken by the petitioner towards bringing about a resumption of cohabitation. It was sufficient, in his opinion, to say that, the burden being always upon the petitioner to prove that a state of desertion had existed at the material time, it must depend upon the circumstances of the individual case whether or not it was necessary that the petitioner should take any and, if so, what steps to that end. His lordship then dealt with the husband's evidence as to the reasons why he had not asked his wife to return. Although, on the facts, the case was very close to the border line, he, his lordship, found the case proved and there would be a decree *nisi*.

COUNSEL: *R. J. A. Temple*, for the petitioner; *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *Lord Drogheda*, for the King's Proctor.

SOLICITORS: *Dehn and Lauderdale*; *The Treasury Solicitor*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Obituary.

SIR W. J. PEARMAN-SMITH.

Sir William Joseph Pearman-Smith, solicitor, senior partner in the firm of Messrs. S. Pearman-Smith & Sons, of Walsall, died on Sunday, 9th April, at the age of seventy-five. Sir William was educated at Wolverhampton Grammar School and was admitted a solicitor in 1884. He had been a councillor for the Borough of Walsall since 1891 and an alderman since 1910. He was knighted in 1936.

MR. S. L. THORNTON.

Mr. Swinford Leslie Thornton, formerly Senior Puisne Judge in Singapore, died at Durban, South Africa, on Friday, 7th April, at the age of eighty-five. Mr. Thornton was educated at King's School, Canterbury, and Lincoln College, Oxford, and was called to the Bar by Lincoln's Inn in 1877. He went to the Straits Settlements, and in 1887 he was appointed Registrar of the Supreme Court, Malacca. After holding various appointments, including that of Attorney-General at St. Vincent in 1894 and Resident Magistrate at Jamaica in 1896, he became a Puisne Judge of the Straits Settlements in 1904 and Senior Puisne Judge in 1906. He retired in 1913.

MR. E. G. H. WEEKS.

Mr. Eric George Hilton Weeks, Barrister-at-Law, of Crown Office Row, Temple, E.C., and Temple Street, Birmingham, died at Wellington, Somerset, on Monday, 10th April. Mr. Hilton Weeks was called to the Bar by the Middle Temple in 1932 and went the Midland Circuit.

MR. H. G. BREDE.

Mr. Herbert George Brede, solicitor, of Ilfracombe, died on Monday, 3rd April, at the age of fifty-eight. Mr. Brede, who was admitted a solicitor in 1909, was Town Clerk of Ilfracombe.

MR. W. H. BURTON.

Mr. William Henry Burton, solicitor, senior partner in the firm of Messrs. W. H. Burton & Son, of Wakefield, and Normanton, died in a nursing home at Leeds on Wednesday, 29th March, at the age of sixty-nine. Mr. Burton served his articles with his uncle, Mr. Thomas Burton, of Wakefield and Ossett, and was admitted a solicitor in 1890. He was a former President of the Wakefield Law Society.

MR. F. W. DARCH.

Mr. Francis William Darch, solicitor, a partner in the firms of Messrs. Cave, Darch, Crickmay & Rundle and Messrs. Cave & Co. of Eastcheap, E.C., and Bournemouth, died on Wednesday, 5th April, in his seventy-first year. Mr. Darch was admitted a solicitor in 1898.

MR. H. W. GREEN.

Mr. Henry William Green, solicitor, a partner in the firm of Messrs. Clark & Co., of Ludlow, died at Ludlow on Monday, 10th April, at the age of eighty-two. Mr. Green was admitted a solicitor in 1881.

MR. H. D. WILSON.

Mr. Herbert Duckworth Wilson, D.S.O., solicitor, a member of the firm of Messrs. Holden & Wilsons, of Lancaster, died at Algiers on Wednesday, 5th April. Mr. Wilson, who was admitted a solicitor in 1891, was formerly assistant Coroner of Lancaster.

The Law Society.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 6th, 7th and 8th March, 1939 :—

Utrick Henry Burton Alexander, Edward Lloyd Alker, LL.B. Manchester, Ernest Saxton Appleby, LL.B. Durham, Anthony Nicholas Armstrong, John Ashburn, Neville Waldegrave Atchley, George Pownall Atkinson, LL.B. Bristol, John Grahame Barker, John Goodwyn Allden Beckett, James Arthur Berry, Eric Laverick Blakey, Robert Cairns Blakiston, Eric George Blandford, Frederick Peter Boyce, LL.B. Leeds, Philip Anthony Boyns, Douglas Ernest Breeze, Allan Deans Brown, Thomas Alan Nicholson Bruce, Frederick William Bull, Gordon Ronald Burke, Richard Ashton Burne, Norman William Butters, Ian Edmund Cameron, Neil Arthur Campbell, Myles Carter, B.A. Cantab., George Norman Bromley Challenor, John Chambres, Michael Carsey Chittock, John Alexander Churchill, Richard Clegg, Montague Cohen, Howard Frederick James Cole, Martin Kynoch Collard, Brian Hugh Hobson Cooke, Brian Davidson, B.A. Oxon, Anthony Alan Gwynne Davies, Eric Henry Davis, Gerard Joseph Dennison, James Granville Dixon, John Neville Dixon, LL.B. Manchester, Leslie Neville Dodd, Peter Howard Earl, Bryan Arthur Edwards, B.A. Oxon, Harry Ellis, James Raymond Ellis, LL.B. Liverpool, John Clifford Holgate Ellis, B.A. Cantab., Charles Henry Elston, John Edward Fairclough, Cecil Vernon Ford, Basil Charles Amphlett Fox, LL.B. London, Anthony Hugh French, Martin Joseph French, Denis Arthur Garne, B.Sc. London, David Henry Graham, B.A. Oxon, Herbert Graham, John Archibald Kenneth Grahame, B.A. Oxon, Donald William Gravett, Victor Francis Green, Benjamin Walter Gregory, Harold Peter Hall, LL.B. Bristol, Clifford James Hammett, Norman

Frank Proctor Hatch, Herbert Julius Hellerman, William Henry Hinton, Arthur Ralph Holbrook, Trafford Aldred Holford, William John Raymond Howells, John Derek Hoyle, Cyril Huddleston, Lewis Grenfell Huddy, B.A. Cantab., James Leslie Hughes, Ambrose Frederick Hussey-Freke, B.A. Cantab., Rupert Arthur Ingram, LL.B. Leeds, Norman David Innes, Godfrey William Iredell, Russell Willan Jackson, Kenneth Graham Johnson, Frank Jones, John Leslie Jones, Norman Arthur Gwyn Jones, Robert Julian Jones, LL.B. London, John Kent, John Snelling Kent, Donald Arthur Kershaw, John Arthur Lawrence, Thomas Marston Lee, B.A. Oxon, Murray Lewin, Charles Vivian Lucas, Denis Lyth, Lockhart Donald Mackirdy, Beatrice Mabel McLoughlin, John Cole Marshall, John Robert Mather, Byam Morgan Mathias-Thomas, Gordon Holmes Meyrick, Donald Charles William Milton, Harold Stephen Morris, B.Sc. Edinburgh, Edward John Moss, John Charlesworth Moult, Francis Ulick John O'Brien, LL.B. London, Eric Parkington, Thomas John Pert, John Leslie Phelps, Seymour Douglas Plummer, Frederick Alan Porter-Smith, Bernard Joseph Potter, LL.B. London, John Edward Powell, Kenelm Vincent Digby Preedy, B.A. Oxon, Cyril Douglas Price, LL.B. Liverpool, David Kirkpatrick Prior, B.A. Cantab., Peter Richard Pumfrey, Thomas Rigby, Peter Allan Rippon, Thomas Chambers Windsor Roe, Maurice Edwin Rooke, Victor Rose, John Rowe, Stanley Rutherford, Anthony Joseph Scruby, Roger Simon, B.A. Cantab., Robert Hugh Edwin Sloan, Patten Bridge Smith, Sydney Smith, James William Smurthwaite, Thomas Frank Swindells, John Eric Symons, Alan Rowland Taylor, Orton Sidney Taylor, Richard Langstone Thorp, Alec Robert Troughton, Stanley Naisbitt Walton, Montague Waters, LL.B. London, John Barlow Wayne, Marks Wayne, Alfred Thirkill Webster, Harry Wells, Gervase John Whale, Lionel Hamer Whalley, John Arthur Wheeler, Alan William White, Solly Wien, LL.B. London, Richard Donald Croft Wilcock, Cyril Wilson, LL.B. London, William Wilson, Harold Edwin Yates.

No. of Candidates, 293. Passed, 145.

The Council have awarded the following Prize: To Brian Davidson, B.A. Oxon, who served his Articles of Clerkship with Mr. Albert George Allen, D.S.O., M.C., of the firm of Messrs. Allen & Overy, of London, the Sheffield Prize (founded by Arthur Wightman, Esq.), value about £34. The Examiners reported that no candidate had shown such proficiency as to entitle him to the John Mackrell Prize.

INTERMEDIATE EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Intermediate Examination held on the 9th and 10th March, 1939. A candidate is not obliged to take both parts of the Examination at the same time.

FIRST CLASS.

John Ade Buckwell (serving articles with Mr. John Sydney Menneer, of the firm of Messrs. Menneer, Idle, Brackett & Williams, of St. Leonards), John Bury Hodgson (serving articles with Mr. Frank Newton, of the firm of Messrs. F. Newton & Son, of Stockport), Ronald Jack Meddings (serving articles with Mr. Herbert Garratt, of Todmorden).

PASSED.

Frederick Sidney Atkins, Arthur Thomas Barringer, Francis Abingdon Bayly, Frederick Michael Boulton, Charles Gordon Bowditch, John Anthony Cavenaugh, Henley Graham Curl, Charles Howard Deans, Tom Franks, Robert Paschal Harries, Michael Edward Pearson Jump, Richard Henry Lepine Keane, Robert Irving Knox, Erich Fritz Loeser, LL.D. Gottingen, Richard Grey Medley, B.A. Cantab., Clement Maurice Noel, John Henry Saunders Nunn, Anthony Bremner Payne, Anthony Robert George Pearce, Abraham Moss Plight, Joseph Randle, Roy Scott, George Nisbet Waldram, Keith McPherson Ward, Richard West, David Knoyle Wood.

The following candidates have passed the Legal portion only:—

Thomas James Backhouse, William Alexander Baddiley, Peter Malet Barrington, Walter Henry Batchelor, William Graham Bennetts, Harold Thomas Bettaney, Peter Andrew Henry Hay Bikker, B.A. Cantab., Harry Lee Bland, William Boys, James Frederick Harold Branson, Armitage Roy Brooke, Peter Melvill Burley, Joan Patricia Burrell, Robert George Danhaive Butler, William Edmund Widdrington Byrne, B.A. Cantab., Frank Alfred Crawshaw Carey, Philip Austin Carne, Joseph Andrew Anthony Cava, B.A. Wales, John Coltman, Harvey Leon Constant, B.A. Oxon, Bernard Keith Cooper, David John Templer Copner, Kenneth Coxon, Cyril Bernard Croft, Frank Harry Daltrey, John Dare, Alan Wrigley Davenport, Francis Mervyn Davies, Dennis Albert Derby, Douglas Patrick Draycott, Thomas Christopher Eaton, Philip Ernest Ricardo English, Thomas Anthony David Ennion, John Huskisson Everett, Charles Ellis Feneley, Harry Michael Ferriday, Kenneth George Frow, Cuthbert Basil Fryer, Alan Frederick Gaisford, Roland Owen George, Leonard John Ghost, Arthur William Kent Gladwell, Alfred Isaac Frank Goldman, Paul Allen Goodwyn, B.A. Cantab., Benjamin Gott, Idris Owen Griffiths, George Frederick Hackett, Henry Rowland Haughton, Geoffrey Reginald Charles Hawkins, Leonard Alfred Haworth, Henry Shekell Illingworth Haynes, Nathan Hershman, Peter Harley Frederic Legrew Hesse, Alfred Hobson, Eric Peters Hodgson, Gert Ulrich Hollander, LL.M. London, Dr. Jur. Heidelberg, John Richard Poulton Hughes, Dudley Stuart Hunt, Charles William Hunter, Michael Newsome Joscelyne, Anthony Keith-Roach, Kenneth Colville Kiddle, Victor Douglas Knox, Thomas Lavelle, Brian Antony Kilmaine le Champion, B.A. Oxon, Frederick Basil Wellesley Linnitt, John Gordon Lowless, John Ronald McInnes, Arthur Neil McQueen, James Magill, Henry Granville Martin, Gordon Coates Middleton, Bernard Charles Mallett Mote, Joan Newman, Desmond Joseph Patrick Nolan, Thomas Gerald Oerton, George Sturrock Pearson, Thomas Edward Pepper, Arthur Donovan Pool, Leslie Vernon Powell, Ferdinand Georg Alfred Quittner, Michael Harrison Pepys Rawlins, Ian Henry Auber Redpath, David Alexander Reid, Bernard Charles Paterson Robinson, Philip John Roper, John Thomas Rowlinson, John Henry Rushworth, Peter Basil Rustom, Jack Sanson, Robert Benson Sidgwick, Francis Walter Nicholas Slinger, James Blair Sloan, Frank James Ash Smith, Richmond Smith, Ronald George Wadham Smith, Robert Edgar Snaylam, Ernest Stapylton Staines, John Champion Stevenson, John Thornley Taylor, Sidney Taylor, Alfred Nelson Tennant, Alexander Henry Thavenot Moncaster, B.A. Cantab., Gordon Grenville Holdsworth Thorburn, Michael Reginald Tilbrooke, Ronald Frederick Arthur Tully, John Leigh Turner, John Percival Pyemont Turner, Neil Edgar Turner, John Gordon Uhthoff, Eric Walton, Frank Allan Wartnaby, John Nicholas Wharton, B.A. Cantab., Charles Arthur White, John Holland Wilcox, George Alec Willans, B.A. Dublin, Geoffrey John Williams, Robert Dane Halsbury Winskell, Peter Thomas Woolley, Ruskin Edwards Wynne.

No. of candidates, 250; passed, 149.

The following candidates have passed the Trust Accounts and Book-keeping Portion only:—

Stanley Rowlatt Allen, John Amphlett, B.A. Oxon, Cuthbert Claude Willis Anderson, Edward Ashley, LL.B. Birmingham, John Askew, George Atkinson-Jowett, B.A. Cantab., Philip John Bairstow, John Baker, Peter Bamford, B.A. Cantab., Edward Cranston Barlow, William Baron, LL.B. Liverpool, John McLaren Barrell, Harold Edward Cort Bathurst, John Norman Baughen, Frank Graham Beadle, B.A. Cantab., Anthony Wilders Beer, B.A. Oxon, Peter Carr Benham, Maurice Bilmes, John Nigel Ralph Bingham, B.A. Cantab., Elias Samuel Birk, B.A. Cantab., Stanley Walter Bishop, Michael Russell Boardman, B.A., LL.B. Cantab., Arthur Donald Bond, Martin Garneys Bond, B.A. Cantab., Clive William Brightwell, Denis Lumb Broadhead, Duncan Sutcliffe Brown, LL.B. Leeds, Donald Fletcher Burden, B.A. Cantab., John Charles Burridge, John Durston Caines, Zelik Caplan, LL.B. Leeds, Peter Marriott Caporn, Thomas Hulton Carson, B.A. Cantab., Bernard Caulfield, LL.B. Liverpool, Peter Philip Cavanna, Anthony George John Chandler, John Kenneth Charles-Jones, Harold Charlesworth, Brian Ralph Clapham, LL.B. London, Dudley Charles Clarke, Peter David Alston Clarke, B.A. Oxon, Francis Hugh Butler Clough, B.A. Oxon, Edwin Trevor Clutterbuck, Louis Bawtree Cobden-Ramsay, B.A. Cantab., John Furley Cockin, Aaron Shulim Cohen, LL.B. London, Maurice Cohen, LL.B. Liverpool, Peter Cranstoun Corby, James Corrigan, LL.B. Sheffield, Henry John Cridland, Kenneth Templeman Crofts, Ronald Patten Crompton, B.A. Oxon, Robert Lionel Cross, Geoffrey Cardwell Daisley, B.A. Cantab., Antony Arthur Darbey, LL.B. Birmingham, Charles Parker Davies, Harold Bruce Dehn, B.A. Cantab., Abraham Charles Meldola de Sola, M.A. Oxon, B.A., B.C.L. McGill, John Alec Done, LL.B. Manchester, Donald Hubert Farre Doulton, B.A. Oxon, John Woodman Dowding, B.A. Oxon, Anthony Horace James Driver, Victor Drummond, Hugh Herbert White Duffy, LL.B. Durham, Francis John Wansford Earle, B.A. Cantab., Alfred Clifford Ebbs, Thomas Henry Edwards, LL.B. Wales, Robert Boggett Elson, Richard Dunstan Enraght Eve, William Edward Farquharson, Edward Milner Farrington, B.A., LL.B. Cantab., Stuart Feldman, George Newton Fisher, B.A., LL.B. Cantab., Charles Frederick Fletcher, John Dennis Fletcher, Joseph Thomas Hutchinson Foottit, B.A. Cantab., Richard Hastings Brereton Francis, B.A. Cantab., Richard John Frearson, B.A. Oxon, Douglas Beresford Griffitt Gabriel, B.A. London, Thomas Anthony Gane, Michael Francis Gilbert, LL.B. London, Geoffrey Staniland Flint Gill, John Foster

Glanville, Jack Goldberg, Douglas Norris Gould, Donald Wood Grant, LL.B. Birmingham, Charles Clifford Green, Alfred Albert Grubb, William John Surman Gurney, B.A. Oxon, Samuel Hall, LL.B. Liverpool, John William Cecil Hands, LL.B. London, David Whishaw Hawkins, B.A. Cantab., Malcolm George Haymes, Ronald Harold Edgar Heath, Tom Hendley, Geoffrey Dalton Hickman, B.A. Cantab., Ernest Henry Hill, B.A. Wales, James Jewill Hill, B.A. Oxon, Michael Hill, Roland Frederick Hills, Kenneth Holden, LL.B. Liverpool, Arthur Geoffrey Holford, Basil Leonard Francis Alfred Holland, Ralph Malory Hollis, B.A. Oxon, Francis Home Howard, Robert Peredur Hughes, LL.B. Wales, Kenneth Gresham Hunnybun, B.A. Cantab., Anthony Patrick Day Hunt, B.A. Oxon, Michael Anselm Hunt, Peter William Huntsman, George Hutchinson, James George Iles, Peter Donald Inman, LL.B. Leeds, John Burton Izod, Arthur Richard Jackson, B.A. Oxon, Thomas Harold Jackson, B.A. Cantab., Kenneth Michael Jacobs, Max Meyer Jacobs, Tom Johnson, Cyril Norman Jones, LL.B. Liverpool, David Guthrie Jones, B.A. Cantab., Michael David Worthington Jones, B.A. Cantab., Thomas William Jones, Arthur Cecil Steuart Julius, B.A. Oxon, John Kettle, B.A. Cantab., John Wickham King, B.A. Oxon, Michael Kramer, LL.B. London, Ian Henry Campbell Lake, Michael Ralph Lance, B.A. Cantab., Desmond Cecil Langford, B.A. Oxon, Albert Benjamin Larcome, George Kelly Gerard Lavery, James Lawlan, B.A., LL.B. Cantab., Vivian Herbert Lawson, John Brian Leaning, Gordon Lowery Lee, Leonard Henry Lee, Derek Bernard Francis Paul Leigh, Arthur Wilson Luke, Patrick Ronald Anthony McCready, B.A. Oxon, John Antony McIlvenna, Arthur Gerald Mammatt, Emmanuel Milton Mannheim, LL.B. Liverpool, Abraham Mark, LL.B. London, Richard Vernon Antony Marshall, Robert Vivian Mather, Ethelbert Matthews, Michael Corbett Mattinson, Morris Melzack, LL.B. London, Kenneth Meyrick Meyrick, Francis Graham Mitchell, B.A. Cantab., John David Bawden Mitchell, LL.B. London, William Henry Musson, Philip John Morton Nethercott, LL.B. Bristol, Charles Maxwell Owen, George Hartley Robertson Owen, David Shirley Parker, Reginald Albemarle Parkin, Arthur Howard Piper, James Powell, B.A. Cantab., Norman Benedict Power, William Preshaw, Margaret Heather Procter, LL.B. Manchester, Edward Roy Pyke, LL.B. London, Douglas Harold Radford, Colin Rawstron, Stanley Chalmers Redhead, LL.B. London, Geoffrey Wynne Rees, Alan John Richards, Armand Robert Graeme Ritchie, Thomas Elliot Robb, Vivian Mather Robson, Isaac Royston Romain, Nicholas Rowntree, B.A. Cantab., Alfred Foster Russell, Barnett Samuel, M.A. Wales, Richard Stainton Edward Sandbach, B.A., LL.B. Cantab., Edward Warren Sankey, John Martin Saunders, LL.B. Birmingham, Philip Geoffrey Sherwood, LL.B. London, Mortimer Silverman, B.A. Oxon, Thomas Stephen Stallabrass, David Edward Charles Steel, B.A. Oxon, Douglas John Stanley Stevens, B.A. Oxon, Walter Henry Stevens, Norman Stockdale, Harry Street, LL.B. Manchester, Frederick Walter Strike, B.Sc., LL.B. London, Roy Forester Sykes, B.A., LL.B. Cantab., Alexander John Taylor, B.A. Cantab., Frank Taylor, James Braithwaite Thomas, LL.B. Liverpool, Thomas Thomas, Colin Hugh Scott Thompson, Reginald William Tudor Thorp, B.A. Oxon, Ian Llewellyn Tibbs, Gordon Greenway Tilsley, LL.B. Cantab., LL.B. Birmingham, Martyn Humphreys Tonge, John Alfred Turner, Robert David Polhill Turner, B.A. Cantab., John Urwin, Roderick Edward Faure Walker, B.A. Oxon, William Anthony Walker, Ivor Lloyd Watkins, B.A. Cantab., Francis Robert Weaver, John Bayliss Webb, B.A. Oxon, Dominic Victor Weibel, Charles Walter Westlake, William Whalley, B.A., LL.B. Cantab., Cyril Edwin Wheeler, Stephen Ralph Good Whetham, William Hartley Whitaker, Douglas Abraham White, John Roger Webb Whitfield, LL.B. Birmingham, John Lionel Collingwood Williams, Maurice Dunbar Hubert Williams, B.A. Oxon, Richard Rees Williams, LL.B. Wales, Kenneth Wilson, Michael John Woffenden, Rupert Dean Wood, Henry Melvin Young, B.A. Oxon, Philip Mervyn Young, Bruce Potier Youngman.

No. of Candidates, 350 : passed, 252.

SCHOOL OF LAW.

Copies of the Annual Prospectus for the Session 1938/39 and of the detailed time-table for the Summer Term, 1939, can be obtained on application to the Principal's Secretary.

The first lectures will be held on 17th April.

For Intermediate students there will be courses on (i) Public Law: The Constitution, (ii) The Law of Property in Land (Part I), (iii) The Law of Contract, (iv) Accounts and Book-keeping, and (v) Trust Accounts.

The Final subjects on the time-table for the Summer Term are (i) Equity, Partnership, Procedure in the Chancery Division, (ii) Negotiable Instruments, (iii) Procedure in the King's Bench Division and in County Courts, and (iv) Income Tax Law. Teaching will also be provided during the term in two optional subjects for the Final Examination, viz.: (i) The Law of Shipping (Part I), and (ii) Local Government and Administrative Law (Part II).

There will also be courses on (i) Equity, (ii) Contract, and (iii) Criminal Law, for Honours and Final LL.B. students; and on (i) English Constitutional Law and History (Part II), and (ii) Criminal Law and the Elements of Criminal Procedure, for Intermediate LL.B. students.

Copies of the regulations governing the three studentships of £40 a year each, offered by the Council for award in July next, can be obtained on application to the Principal's Secretary. The entry forms for this year's studentships must be sent in by 1st May.

Parliamentary News.

Progress of Bills.

House of Lords.

Bootle Corporation Bill.
Reported, with Amendments. [4th April.

Croydon Corporation Bill.
Committed. [5th April.

Deer and Ground Game (Scotland) Bill.
Read Third Time. [4th April.

Exeter Extension Bill.
Read Third Time. [5th April.

Gosport Corporation Bill.
Read Third Time. [4th April.

India and Burma (Miscellaneous Amendments) Bill.
Read First Time. [5th April.

King Edward the Seventh Welsh National Memorial Association Bill.
Read Third Time. [4th April.

Merthyr Tydfil Corporation Bill.
Reported, with Amendments. [4th April.

Ministry of Health Provisional Order (Colchester) Bill.
Reported, without Amendment. [4th April.

Ministry of Health Provisional Order (Newbury) Bill.
Reported, without Amendment. [4th April.

Oswestry Corporation Bill.
Read Third Time. [4th April.

Prevention of Fraud (Investments) Bill.
Further Amendment made and Bill passed. [5th April.

Public Health (Coal Mine Refuse) (Scotland) Bill.
Read First Time. [6th April.

Royal Wanstead School Bill.
Reported, with Amendments. [4th April.

Scottish Union and National Insurance Company Bill.
Read Third Time. [4th April.

Southampton Harbour Bill.
Committed. [5th April.

Tynemouth Corporation Bill.
Read Third Time. [4th April.

Wear Navigation and Sunderland Dock Bill.
Read Second Time. [5th April.

House of Commons.

Access to Mountains Bill.
Reported, with Amendments. [4th April.

All Hallows Lombard Street Bill.
Read Third Time. [6th April.

Civil Defence Bill.
Read Second Time. [5th April.

Dover Coal Dues (Abolition) Bill.
Reported, without Amendment. [4th April.

Gosport Corporation Bill.
Read First Time. [4th April.

King Edward the Seventh Welsh National Memorial Association Bill.
Read First Time. [4th April.

London and North Eastern Railway (Superannuation Fund) Bill.
Amendments considered. [6th April.

London Midland and Scottish Railway Bill.
Reported, with Amendments. [4th April.

Oswestry Corporation Bill.
Read First Time. [4th April.

Public Health (Coal Mine Refuse) (Scotland) Bill.
Read Third Time. [5th April.

Saint Nicholas Millbrook (Southampton) Church (Sale) Bill.
Reported with Amendments. [4th April.

Scottish Union and National Insurance Company Bill.
Read First Time. [4th April.

South Shields Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [5th April.
Tynemouth Corporation Bill.
Read First Time. [4th April.

Rules and Orders.

THE AIR-RAID PRECAUTIONS (COMPULSORY PURCHASE) PROVISIONAL REGULATIONS, 1939, DATED 10TH MARCH, 1939, MADE BY THE SECRETARY OF STATE UNDER SECTION 5 OF THE AIR-RAID PRECAUTIONS ACT, 1937 (1 & 2 GEO. 6, C. 6), AND UNDER SECTIONS 161 AND 175 OF THE LOCAL GOVERNMENT ACT, 1933 (23 & 24 GEO. 5, C. 51). [Price 2d.]

Legal Notes and News.

Honours and Appointments.

The King has approved the following appointments, on the recommendation of the Lord Chancellor, under the Administration of Justice (Miscellaneous Provisions) Act, 1938: Somersetshire Quarter Sessions—Chairman, Mr. THOMAS HENRY WATSON; Deputy Chairmen, Mr. EDWARD PHILIP THURSFIELD, and Mr. GONNE ST. CLAIR PILCHER, K.C. Caernarvon County Quarter Sessions—Deputy Chairman, Mr. JOHN WILLIAM MORRIS, K.C. The appointments are to take effect from 4th April.

The King has appointed Mr. HENRY DASHWOOD STUCLEY LEAKE, Barrister-at-Law, one of the Charity Commissioners, to be Chief Charity Commissioner in the room of Mr. Ewen Macpherson, resigned; Mr. JAMES ELWIN COKAYNE ADAMS, Barrister-at-Law, Secretary to the Charity Commissioners, is appointed a Commissioner to fill the vacancy so caused, and Mr. WILLIAM FRANCIS FOX, Barrister-at-Law, is appointed Secretary to the Charity Commissioners.

Mr. P. H. M. OPPENHEIMER, Barrister-at-Law, has been appointed Deputy Stipendiary Magistrate to Mr. F. St. John Morrow at the West Ham Police Court.

The following appointments and promotions are announced in the Colonial Legal Service: Mr. R. L. RIEU, appointed Assistant Commissioner of Lands, Gold Coast; Mr. D. D. J. COFFEY, appointed Resident Magistrate, Kenya; Mr. R. M. CLUER (Crown Counsel, Straits Settlements), appointed Puisne Judge, Tanganyika Territory.

Mr. R. DE ZOUCHE HALL, LL.B. (Cantab.), Second Assistant Solicitor, Nottingham, has been recommended for the post of Deputy Town Clerk of Gloucester, made vacant by the appointment of Mr. A. F. GREENWOOD to the Town Clerkship of Leamington Spa. Mr. Hall was educated at Birkenhead School, Liverpool University, and St. John's College, Cambridge, and was admitted a solicitor in 1933. He was previously Assistant Solicitor to the Norwich Corporation and Senior Assistant Solicitor to the West Hartlepool Corporation.

Notes.

Mr. Leonard Warner, Coroner for the Fareham district of Hampshire for thirty years and one of the oldest Coroners in England, has retired at the age of eighty-three. Hampshire County Council has appointed his son and deputy, Major Hewett Warner, to succeed him.

The Judicial Committee of the Privy Council will resume its sittings next Thursday with a list of nineteen appeals, compared with eleven in the corresponding list for last year. In the present list twelve appeals are from India, three from West Africa and one each from Canada, Trinidad, Ceylon and Palestine. Seven judgments remain to be delivered.

The thirty-ninth annual general meeting of the Edinburgh Legal Dispensary was held recently in the Society's rooms, Forres Street, Edinburgh, when Mr. E. M. Wedderburn, LL.D., D.K.S., presided. Mr. Joseph Chalmers, S.S.C., secretary and treasurer, said the number of consultations during the year had been the second highest recorded during the Society's existence. Altogether there were 3,471 consultations and 2,029 clients during the year. The record attendance on a single night had been surpassed in March, 1938, when the new total of 104 callers was recorded.

Wills and Bequests.

Mr. Ernest Louis David Zeffertt, solicitor, of Highgate and Coleman Street, E.C., left £70,521 with net personalty £66,813.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 27th April 1939.

	Div. Months.	Middle Price 12 Apl. 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	103	3 17 8	3 15 5
Consols 2½%	JAJO	66½	3 15 2	—
War Loan 3½% 1952 or after ..	JD	94⅞	3 14 1	—
Funding 4% Loan 1960-90	MN	104⅛	3 16 7	3 13 10
Funding 3% Loan 1959-69	AO	91⅜	3 5 5	3 8 10
Funding 2¾% Loan 1952-57 ..	JD	89½	3 1 5	3 11 0
Funding 2½% Loan 1956-61 ..	AO	82⅝	3 0 5	3 13 1
Victory 4% Loan Av. life 21 years	MS	104¼	3 16 9	3 14 2
Conversion 5% Loan 1944–64 ..	MN	107	4 13 5	3 5 7
Conversion 3½% Loan 1961 or after	AO	93⅛	3 14 10	—
Conversion 3% Loan 1948-53 ..	MS	95	3 3 2	3 9 2
Conversion 2½% Loan 1944-49 ..	AO	92	2 14 4	3 9 2
National Defence Loan 3% 1954-58	JJ	93¼	3 4 4	3 9 5
Local Loans 3% Stock 1912 or after	JAJO	78½	3 16 5	—
Bank Stock	AO	308½	3 17 9	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	76	3 12 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	79	3 15 11	—
India 4½% 1950-55	MN	106½	4 4 6	3 15 4
India 3½% 1931 or after	JAJO	80	4 7 6	—
India 3% 1948 or after	JAJO	68	4 8 3	—
Sudan 4½% 1939-73 Av. life 27 years	FA	104½	4 6 1	4 4 4
Sudan 4% 1974 Red. in part after 1950	MN	103xd	3 17 8	3 13 9
Tanganyika 4% Guaranteed 1951-71	FA	104½	3 16 7	3 10 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	103½	4 6 11	3 0 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	85½	2 18 6	3 13 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	97	4 2 6	4 3 6
Australia (Commonw'th) 3% 1955-58	AO	81	3 14 1	4 10 3
*Canada 4% 1953-58	MS	107	3 14 9	3 7 3
Natal 3% 1929-49	JJ	96⅛	3 2 2	3 9 3
New South Wales 3½% 1930-50 ..	JJ	90	3 17 9	4 13 8
New Zealand 3% 1945	AO	88½	3 7 10	5 5 7
Nigeria 4% 1963	AO	102½	3 18 1	3 16 9
Queensland 3½% 1950-70	JJ	87⅛	4 0 0	4 4 8
*South Africa 3½% 1953-73	JD	98	3 11 5	3 12 1
Victoria 3½% 1929-49	AO	89½	3 18 3	4 17 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	80	3 15 0	—
Croydon 3% 1940–60	AO	91	3 5 11	3 12 4
*Essex County 3½% 1952-72 ..	JD	99½	3 10 4	3 10 6
Leeds 3% 1927 or after	JJ	79½	3 15 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase..	JAJO	93	3 15 3	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	63⅛	3 18 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	76	3 18 11	—
Manchester 3% 1941 or after ..	FA	77½	3 17 5	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	91½	2 14 8	3 10 5
Metropolitan Water Board 3% "A" 1963-2003	AO	79½	3 15 6	3 17 4
Do. do. 3% "B" 1934-2003 ..	MS	79½	3 15 6	3 17 4
Do. do. 3% "E" 1953-73 ..	JJ	91	3 5 11	3 9 1
*Middlesex County Council 4% 1952-72	MN	103	3 17 8	3 14 5
* Do. do. 4½% 1950-70	MN	106½	4 4 6	3 16 2
Nottingham 3% Irredeemable ..	MN	77	3 17 11	—
Sheffield Corp. 3½% 1968	JJ	98	3 11 5	3 12 3
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	94	4 5 1	—
Gt. Western Rly. 4½% Debenture ..	JJ	105	4 5 9	—
Gt. Western Rly. 5% Debenture ..	JJ	115½	4 6 7	—
Gt. Western Rly. 5% Rent Charge ..	FA	107½	4 13 0	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	101	4 19 0	—
Gt. Western Rly. 5% Preference ..	MA	77	6 9 10	—
Southern Rly. 4% Debenture ..	JJ	93½	4 5 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 0
Southern Rly. 5% Guaranteed ..	MA	106	4 14 4	—
Southern Rly. 5% Preference ..	MA	89	5 12 4	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date